

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

v.

14 CR. 604 (VB)

TYRONE FELDER,

Defendant.

-----X

U.S. Courthouse  
White Plains, N.Y.  
September 6, 2018  
9:40 a.m.

Jury Trial Before: HON. VINCENT L. BRICCETTI,  
United States District Judge

**APPEARANCES:**

GEOFFREY S. BERMAN  
United States Attorney for the  
Southern District of New York  
BY: CELIA V. COHEN  
HAGAN C. SCOTTEN  
ANDEN F. CHOW  
Assistant U.S. Attorneys

ANDREW G. PATEL, Esq.  
DAVID A. RUHNKE, Esq.  
BENJAMIN A. SILVERMAN, Esq.  
Attorneys for Defendant

Sue Ghorayeb, R.P.R., C.S.R.  
Official Court Reporter

1 (Jury not present in the courtroom)

2 THE COURT: Good morning, everybody.

3 Have a seat, please.

4 I just wanted to confirm that you received the  
5 revised jury charge which we e-mailed last night.

6 Government receive it?

7 MR. CHOW: Yes, Your Honor.

8 MR. RUHNKE: Yes, Your Honor, we received it.

9 THE COURT: Great, and also the verdict sheet.

10 As far as the charge is concerned, I found what I  
11 thought was a typo on Page 36 of the -- it was the previous  
12 version of the charge, which was -- hold on one second. On  
13 the draft that I sent you the other day, which was dated  
14 9/5/2018, on Page 36, we were talking about the firearms  
15 offense elements. And it says, "Third, the Defendant acted  
16 willfully and knowingly." I don't think that that's correct.  
17 In fact, in the, in the more detailed explanation of the  
18 third element, which was not objected to by the Defense, it  
19 says basically that the Defendant had to know that he was  
20 carrying or using a firearm, et cetera. That's on Page 42.  
21 The word "willfully" doesn't appear in there, it doesn't  
22 appear in the Indictment, and it also doesn't appear in the  
23 statute, so I changed it to -- instead of willfully, I  
24 changed it on what is now Page -- well, I guess it's still  
25 Page 36. Sometimes these change. Yeah, I changed it on

1 Page 36 of what I sent you last night to, "The Defendant  
2 acted unlawfully and knowingly," and didn't change anything  
3 else.

4 Do you agree with that?

5 MR. CHOW: Yes.

6 THE COURT: So, was it just a typo? I mean,  
7 willfully, unlawfully, knowingly, intentionally, all those  
8 things are kind of related, but there are differences, of  
9 course.

10 MR. CHOW: Yes. I think it's fine that willfully  
11 was taken out.

12 MR. RUHNKE: We have no objection to the change,  
13 Your Honor.

14 THE COURT: Thank you. It's funny. You know, all  
15 these eyes are pouring over these -- this -- a jury charge,  
16 and yet, we missed that. But that's okay. Better that we  
17 catch it now. That was one.

18 The second thing was, I did move -- I did include  
19 what the Government wanted me to include from the charge  
20 regarding no particular -- hold on one second. What page is  
21 that? Sorry.

22 MR. CHOW: Page 3?

23 THE COURT: Page -- what was it?

24 MR. CHOW: Three.

25 THE COURT: Yeah, but what -- the investigative

1 techniques charge, where was that in the original charge?

2 MR. CHOW: Oh.

3 THE COURT: Not the original, but the first draft  
4 that I sent you. I want the record to be clear here.

5 MR. SILVERMAN: Your Honor, it's Page 55 of your  
6 draft of yesterday.

7 THE COURT: I'm looking at the wrong version. But,  
8 anyway, remember that the Defense objected to the language  
9 about the "you've heard arguments during cross-examination --  
10 you've heard in the arguments of counsel and in  
11 cross-examination of witnesses about the failure to perform  
12 certain types of investigative actions." They didn't want  
13 that in there, but the Government wanted in the reference to  
14 the fact that the Government -- that there's no legal  
15 requirement that the Government prove its case through any  
16 particular means. So, what I did is I moved that into the  
17 presumption of innocence, burden of proof, reasonable doubt  
18 charge starting on Page 3.

19 Do you see that?

20 MR. CHOW: Yes.

21 THE COURT: Is that acceptable to the Government?

22 MR. CHOW: Yes.

23 THE COURT: To the Defense?

24 MR. PATEL: No objection, Your Honor.

25 THE COURT: Okay. It's now the third paragraph on

1 Page 3 of what I sent you last night. Anyway, I think that's  
2 certainly correct.

3 And then, finally, the Pinkerton charge. I did  
4 give some more thought to this. You know, again, this is one  
5 of those situations where, arguably, both sides are right.  
6 The Government is correct that Pinkerton liability exists,  
7 and that there are circumstances under which it's appropriate  
8 to charge the jury on Pinkerton liability. I just don't  
9 think that this is one of those cases. That's the bottom  
10 line, for all the reasons that we talked about yesterday. I  
11 don't have to go over it again, but I just think it's  
12 unwarranted under the circumstances of this case.

13 We read Judge Engelmayer's decision that had been  
14 cited by the Defense, and it was a different -- the  
15 circumstances were quite different there, but the point was  
16 the same, which is that sometimes it's warranted and  
17 sometimes it's not, and it's a judgment call. And in that  
18 case, he made the judgment call not to include a Pinkerton  
19 charge; and then, although he didn't say this exactly,  
20 apparently regretted it later on, because later on the --  
21 after -- you know, after trial, the defendant in that case  
22 was convicted of the conspiracy charge but not the  
23 substantive offense that was the object of the conspiracy, or  
24 one of the substantive offenses. And, so, the defendant  
25 argued, well, these are inconsistent verdicts and therefore

1 you should set aside the guilty verdict on the conspiracy  
2 charge. Judge Engelmayer denied that application, and  
3 although he didn't say this exactly, it was, it was -- we  
4 already discussed this -- in a footnote. It was almost sort  
5 of an ironic situation, where he was saying, well, I gave you  
6 the benefit of not having a Pinkerton charge, and apparently,  
7 as a result of that -- or if I had given a Pinkerton charge,  
8 it's much more likely that you would have been convicted on  
9 both the substantive and the conspiracy and then there would  
10 be no inconsistency. So, I'm not going to -- having given  
11 you that benefit, I'm not going to give you the additional  
12 benefit of declaring some sort of inconsistency between those  
13 two verdicts.

14 In any event, the bottom line is, it's out. Okay?  
15 So, I'm sure you noticed that. All right. That's all I had.

16 Oh, on the verdict sheet, the only change I made  
17 was from what we had talked about yesterday was in the  
18 caption for Count Nine on Page 4, it said conspiracy. I just  
19 added the word "robbery," robbery conspiracy. That's the way  
20 it's defined, or that's the way it's captioned in the  
21 Indictment, and that language seems to be consistent with  
22 the -- you know, with the other captions for all of the other  
23 counts in the verdict sheet. I don't know if you noticed  
24 that, but I wanted to point that out to you. Okay.

25 Anything else we need to do before I bring the jury

1 out?

2 MR. CHOW: Not from the Government.

3 MR. RUHNKE: Not from us, Your Honor.

4 THE COURT: All right. Great.

5 Ms. Cohen, you're going to be closing?

6 MS. COHEN: That's correct, Your Honor.

7 THE COURT: Best guess on how long it's going to  
8 take? I'm not going to restrict you. I'm just --

9 MS. COHEN: Yeah. Probably around an hour and a  
10 half.

11 THE COURT: Okay. That's fine.

12 All right. Let's get the jury.

13 MR. RUHNKE: And, Your Honor, it may be obvious, but  
14 I'll need a break after her closing to set up.

15 THE COURT: It is obvious. You'll get it.

16 MR. RUHNKE: Thank you.

17 (Jury present in the courtroom)

18 THE COURT: Okay. Welcome, everybody. Have a seat.

19 Okay. We have come to that point in the trial  
20 where the Government is going to make a closing argument and,  
21 if the Defense wants to make one as well, they will follow.  
22 And then after that, if the Defense makes a closing argument,  
23 the Government will have an opportunity to make a rebuttal  
24 argument.

25 Ms. Cohen.

## Cohen-Summation

1 MS. COHEN: Thank you, Your Honor.

2 THE COURT: You may proceed.

3 MS. COHEN: At the start of this trial, Mr. Chow  
4 stood up in front of you and told you what the evidence would  
5 prove. Ladies and gentlemen, now you know what that evidence  
6 proves. It proves that in August of 2014, Tyrone Felder led a  
7 crew that killed and terrorized people unlucky enough to cross  
8 their path. You know that four men working together committed  
9 a series of heinous crimes in the early morning hours of  
10 August 5th, 2014. They lured cab driver Maodo Kane to a  
11 secluded section of the Bronx, where they executed him with a  
12 single gunshot to his head. Then they drove off in Mr. Kane's  
13 stolen cab, leaving him dead on the side of the road. They  
14 drove to Yonkers, where they used not one, but three guns to  
15 rob the Irish mini mart and a Dunkin' Donuts and to terrorize  
16 the people inside. Then they ditched Mr. Kane's cab under the  
17 Deegan, doused it in bleach, and went back to the Third Avenue  
18 apartment to split up the loot.

19 After a week and a half of trial filled with hours  
20 of video, pages of phone records, cell site data, DNA,  
21 ballistics and the testimony of dozens of witnesses, you know  
22 exactly who those four men are: Tyrone Felder, Kareem  
23 Martin, Takiem Ewing and Tommy Smalls. You also know the  
24 truly terrible fact, that Felder and his crew set out to  
25 commit the same heinous crimes again exactly one week later.



## Cohen-Summation

1 And, once again, a cab driver, doing nothing but trying to  
2 earn a living in the Bronx, was killed. Aboubacar Bah  
3 suffered the same death as Mr. Kane, executed with a single  
4 gunshot to his head, his body dumped in the street.

5 Ladies and gentlemen, there is no reasonable  
6 dispute that these monstrous crimes occurred, and there is no  
7 reasonable dispute that Felder and his crew are the four men  
8 who committed them. Piece after piece, the evidence has  
9 piled up. You saw for yourself Felder chase Mr. Bah's cab on  
10 August 12th as it rolled down Bryant Avenue with a dead man  
11 behind the wheel. You saw Felder drive off in that cab,  
12 Mr. Bah lying in a pool of his own blood in the middle of  
13 Bryant Avenue. You saw him ditching the cab after wiping it  
14 down, and running away with a gun in his hand as he and the  
15 rest of the crew went to dump the clothes they were afraid  
16 would give them away, not realizing it was too late. But it  
17 was too late then, and it's too late now.

18 Felder's crimes recorded by dozens of cameras and  
19 witnessed by people in the neighborhood. People like  
20 Anastasa Burgess, who called 911 to report Felder and the  
21 others dumping Mr. Bah's body, and Donna Spry, who saw them  
22 ditching the cab and dumping their clothes. That evidence,  
23 ladies and gentlemen, is devastating.

24 Felder does no better on August 5th. His phone  
25 records show you that he's in constant contact with his crew

## Cohen-Summation

1 leading up to the carjacking. Phone records also show you,  
2 as soon as Felder crews -- Felder's crew gets into Mr. Kane's  
3 cab, it heads straight to Bailey Avenue to pick Felder up.  
4 And after Mr. Kane is brutally killed, Felder is on video  
5 driving the dead man's stolen cab. He's on video  
6 participating in the Yonkers robbery. And he's on video  
7 right after they ditched that cab. Just 11 minutes later,  
8 he's right there in the lobby of Ewing's building with the  
9 rest of the crew, wearing the same jeans and same sneakers he  
10 had at the robberies, the same jeans and same sneakers he had  
11 when they dumped Mr. Kane's stolen cab. And what did Felder  
12 do when he got back to Ewing's building? You watched him  
13 destroy evidence, throwing it down the trash chute, exactly  
14 what Ewing, Martin and Smalls do.

15 Ladies and gentlemen, this past week and a half has  
16 built a mountain of evidence, and I know you've paid close  
17 attention to all of it. Because of that, I know that I don't  
18 have to go over every last thing that you saw and heard. I  
19 want my time up here to be helpful, so I'll spend the rest of  
20 it showing you how that evidence lines up with the charges in  
21 the Indictment. That will show you what I think you already  
22 know, that as much as this is a violent case, it's not a hard  
23 one. The evidence clearly, plainly, beyond a reasonable  
24 doubt proves Felder guilty as charged.

25 As Judge Briccetti told you at the start of the

## Cohen-Summation

1 trial, Felder is charged with nine separate crimes. They  
2 fall into four categories: two counts of carjacking resulting  
3 in death for the fatal carjackings of Mr. Kane and Mr. Bah;  
4 two counts of robbery for robbing the Irish mini mart and the  
5 Dunkin' Donuts; four counts of firearms offenses, one for  
6 each of the carjackings and robberies; and, finally, one  
7 count of participating in a robbery conspiracy, for agreeing  
8 to participate in those crimes.

9 Judge Briccetti is going to instruct you on the law  
10 that you must follow in deciding this case. It's what he  
11 says that matters. But I'm going to walk you through what I  
12 expect those instructions on the law to be, and why, when you  
13 apply that law to the facts in this case, you know that  
14 Felder is guilty as charged.

15 Let's start with Counts One and Seven, the  
16 carjacking counts. Carjacking has four elements. Elements  
17 are just the parts of a crime. As I will explain, it's  
18 because the evidence you've seen and heard proves each of  
19 these four elements that Felder is guilty of Counts One and  
20 Seven.

21 Let's start with the first element, that the  
22 Defendant took a motor vehicle from the person or presence of  
23 another. There is no question that Mr. Kane and Mr. Bah's  
24 cabs were taken from them. As you heard from Officer Aronson  
25 and as you saw in photos from August 5th, 2014, Mr. Kane's

## Cohen-Summation

1   bleach-soaked Lincoln Town Car was ditched under the Deegan  
2   near the Yankee Stadium Metro-North Station. You know from  
3   the maps that are in evidence that this is miles away from  
4   Hunter Avenue, where the 911 caller, Mr. Willet, found  
5   Mr. Kane's body and where Officer Austin, the first  
6   responder, found him.

7           You know from Detective Beltry and photos from  
8   August 12th that Mr. Bah's bloody, battered Toyota was found  
9   next to the school on Underhill Avenue, while Mr. Bah lay  
10   lifeless, exactly where the 911 caller, Miss Burgess, saw his  
11   body dumped in the middle of Bryant Avenue.

12           But how do you know that Felder participated in  
13   taking Mr. Kane and Mr. Bah's cars? You know that Felder was  
14   with Martin, Ewing and Smalls from start to finish on both  
15   August 5th and August 12th, based not just on witness  
16   testimony, but on dozens of videos, pages of phone records,  
17   and cell site evidence.

18           Let's talk about some of that evidence, and let's  
19   start with August 12th, because that's when Felder and his  
20   crew messed up. That's when they not only killed Mr. Bah  
21   inside his cab, but they damaged that cab. Remember the cell  
22   site expert, Special Agent Perry? He explained to you that  
23   based on the cell phone towers used by Martin, Ewing and  
24   Smalls, we know that the three of them were hanging out  
25   together at River Park Towers from approximately 2:00 a.m. to

## Cohen-Summation

1 4:00 a.m. on August 12th. Some of the very calls and text  
2 messages that generated that cell site show you that Felder  
3 was with them too.

4 Look at the first two text messages. Felder tells  
5 Ewing, "he's coming down now, bro." What does Ewing do? He  
6 tells Martin that Felder is on his way down so that they can  
7 all get going, and they do. Cell site again shows you that  
8 Martin, Smalls and Ewing traveled to Ewing's apartment  
9 building on Third Avenue. And the video from Ewing's  
10 apartment building tells you that Felder is right there with  
11 him. You watched Ewing, Martin, Smalls and Felder walk into  
12 Ewing's building together at approximately 4:20 a.m..

13 Ladies and gentlemen, you know who those four men  
14 are, Special Agent Kenney told you when he testified last  
15 week, but, ladies and gentlemen, you also know who those four  
16 men are because you have spent the better part of the past  
17 week -- last week and a half looking at that face board and  
18 looking at Mr. Felder, and you can tell, plain as day, who is  
19 in that video.

20 Based on the same testimony and, once again, your  
21 own two eyes, you know that around 5:00 a.m., Martin came out  
22 of Ewing's apartment in a Brooklyn Nets sweatshirt, and Ewing  
23 came out in an Adidas sweatshirt and black backpack. They  
24 walked out of the building and headed south, the same  
25 direction they had walked one week earlier, on August 5th,

## Cohen-Summation

1     only this time they walked half a block closer to the Futa  
2     Islamic Center. You know from Tommy Smalls that while Ewing  
3     and Martin looked for a cab, Smalls and Felder waited in the  
4     apartment with the guns.

5             The phone records tell you the same thing. While  
6     Martin and Ewing were out looking for a cab, they used  
7     Smalls's cell phone to call Smalls and Felder, who were still  
8     back in Ewing's apartment, to keep them updated on the cab  
9     situation. From just 5:01 to 5:19, Smalls's phone connects  
10    with Ewing's apartment phone eight times. And what happens  
11    right after the last call? The video shows Smalls and Felder  
12    exiting Ewing's apartment building to join Ewing and Martin  
13    at Third Avenue and 166th Street. Now, as you remember,  
14    these video time stamps are approximate. Here, you see  
15    Smalls and Felder exiting Ewing's apartment building moments  
16    after the last call from Smalls' phone to Ewing's apartment.

17            And there is a mountain of evidence that when  
18    Felder and Smalls joined up with Martin and Ewing, all four  
19    of them got into Mr. Bah's cab. To start, you saw Felder and  
20    the rest trying to get a cab on Third Avenue. In fact, you  
21    not only saw them trying to hail cabs in Government  
22    Exhibit 337, but you heard from one of the cab drivers who  
23    stopped, Mr. Barrie. Remember Mr. Barrie told you this was  
24    his cab? The light-colored Marquis on the right-hand side?

25            Mr. Barrie also told you that a heavysset black man

## Cohen-Summation

1 in his twenties flagged him down and asked for a ride to  
2 Hunts Point. And Mr. Barrie told you that as this heavyset  
3 man was asking for a ride to Hunts Point, two things  
4 happened: the man was looking inside Mr. Barrie's cab for  
5 cameras and three other men approached the car. Mr. Barrie  
6 felt unsafe, so he said no and drove away.

7 But that didn't deter Felder and the others. You  
8 watched as Felder and his crew lured Mr. Bah in on August  
9 12th. You know from Mr. Barrie that Mr. Bah had also been at  
10 the Futa Islamic Center during those early morning hours.

11 Driving up Third Avenue, Mr. Bah pulls over. He's  
12 driving his black Toyota livery cab. And as you can see,  
13 four men approach to get into the cab, wearing the same  
14 clothes they were wearing in the video from Ewing's apartment  
15 building. Watch as Smalls comes from the top of the screen,  
16 walks in front of Mr. Bah's cab and uses his sweatshirt to  
17 open the back passenger door.

18 (Video playing)

19 MS. COHEN: All of them are in. The plan is in  
20 motion. Ladies and gentlemen, this is the last video  
21 capturing Mr. Bah alive. Felder's crew directed Mr. Bah to  
22 Hunts Point, the same place they had tried to direct Mr.  
23 Barrie. But in Hunts Point things didn't go as planned.  
24 Mr. Bah was killed inside the cab and the cab itself was  
25 damaged. You know that because you watched Felder and the

## Cohen-Summation

1 others chase Mr. Bah's cab as it rolled down Bryant Avenue.  
2 That cab, ladies and gentlemen, had no one but a dead man  
3 behind the wheel.

4 To be absolutely clear, this video shows Felder in  
5 the same sweatshirt, the same distinctive black-and-white  
6 sneakers that he wore when he was captured on video walking  
7 out of Ewing's apartment building earlier that morning.  
8 Smalls is also in the same clothes as he was earlier, a light  
9 color hoodie and jeans. Ewing is in the same clothes too, an  
10 Adidas sweatshirt and a black backpack. And the same for  
11 Martin, a dark-colored sweatshirt with white writing and dark  
12 shorts.

13 You know that after Felder and the rest of the crew  
14 chased Mr. Bah's cab, they caught up with it. Miss Burgess,  
15 who was living on Bryant Avenue at the time, told you she saw  
16 men chasing the cab. She saw them pull Mr. Bah's lifeless  
17 body from the cab, throw it in the middle of Bryant Avenue  
18 and drive off. You listened to her describe the scene in  
19 real time in her 911 call. You saw the exact same thing as  
20 you watched this video from 750 Bryant Avenue.

21 The next time you saw Felder and the others, they  
22 were ditching the car on Underhill Avenue next to the school.  
23 Felder, unmistakably wearing a blue sweatshirt with white  
24 strings, dark shorts and black-and-white sneakers, is first  
25 out of the car. He's followed by Ewing in an Adidas



## Cohen-Summation

1     sweatshirt, Martin in the Brooklyn Nets sweatshirt, and  
2     Smalls in the light sweatshirt and jeans. You can plainly  
3     see these same four men in the same clothes as they run  
4     across to Bolton Avenue.

5                     (Video playing)

6                     MS. COHEN: And you can see Felder in the same  
7     shorts and the same sneakers, wearing his same blue  
8     sweatshirt, throwing the clothes into the dumpster on Bolton.

9                     You can follow Felder, with not only his black-and-  
10    white shoes in plain sight, but his face, uncovered for  
11    everyone to see, all the way across Stevenson Commons, back  
12    to Ewing's apartment building and back up to Ewing's  
13    apartment on the ninth floor.

14                    And if Felder's first time to the dumpster somehow  
15    wasn't clear enough, you know he went back a second time.  
16    You saw that less than ten minutes after Felder, Ewing,  
17    Martin and Smalls gathered back at Ewing's apartment, Smalls,  
18    Felder, and then Martin decided to go back to the dumpsters  
19    to get what they had left behind. You know that the three of  
20    them all went back. Smalls tried to grab everything he  
21    could, stuffing things into the black backpack that Ewing had  
22    been carrying during the carjacking. But you know Smalls  
23    missed something: Martin's latex gloves. Remember, you saw  
24    Martin in the Brooklyn Nets sweatshirt peel off his latex  
25    gloves as he ran behind Felder towards the dumpsters on

## Cohen-Summation

1 Bolton earlier that morning after they ditched the cab.  
2 Smalls missed those gloves when he and Martin and Felder went  
3 back to the dumpster, but the police found them. You know  
4 those are Martin's gloves because the DNA expert, Miss Perez,  
5 confirmed they had Martin's DNA on them.

6 So, with Martin's gloves still at the bottom of the  
7 dumpster, you watched Smalls throw everyone's sweatshirts  
8 into Ewing's backpack, and you watched Felder, Martin and  
9 Smalls retrace their steps from earlier that morning almost  
10 exactly, back down Bolton Avenue, across Stevenson Commons,  
11 to White Plains Road, where they got in a cab back to Ewing's  
12 apartment.

13 The video shows Felder, Martin and Smalls coming  
14 back with Ewing's black backpack stuffed with the hoodies  
15 they wore when they carjacked Mr. Bah. And although there's  
16 no question who these three men walking through the lobby at  
17 Third Avenue are, Felder confirms it with his phone records.  
18 You can see Felder's phone in his hand as he walks into the  
19 building, and his phone records show him trying to text Ewing  
20 three times to let them into the building. And then,  
21 finally, an IM to Ewing goes through. "Buz."

22 Ladies and gentlemen, the phone records, cell site,  
23 video and witness testimony all show that Felder participated  
24 in the August 12th carjacking of Mr. Bah.

25 Let's talk about August 5th. Like August 12th,

## Cohen-Summation

1 August 5th also started at River Park Towers. Once again,  
2 you know that Felder, Martin and Smalls were there, because  
3 the cell site tells you that. Remember, the Felder phone is  
4 green, the Martin phone is in black, and the Smalls phone is  
5 in red. And, once again, the phone records show that Felder  
6 is right in the mix. From just 2:00 a.m. to 2:45 a.m.,  
7 Felder, Martin and Smalls reach out to each other eight  
8 times.

9 Cell site tells you that Felder then travels to his  
10 apartment on Bailey Avenue. He gets there at approximately  
11 3:30, and he stays there until about 4:19, repeatedly talking  
12 to Smalls and Ewing by phone in between. You know that while  
13 Smalls and Ewing are talking to Felder, they're with Martin  
14 at Ewing's apartment. You watched them walk into that  
15 building together at 3:30. You watched them walk back out,  
16 now in their carjacking and robbery clothes, around 3:51.

17 You know that the reason Felder didn't go to  
18 Ewing's apartment with Smalls, Martin and Ewing was because  
19 Felder needed to go to Bailey Avenue to change his clothes.  
20 He also needed to pick up the guns. You know that from Tommy  
21 Smalls, but you also know that from Felder's phone records.  
22 Those records show that from the moment Smalls, Ewing and  
23 Martin got to Ewing's apartment, until they headed back out  
24 to pick up a cab, Felder stayed in close contact, calling or  
25 being called 11 separate times from around 3:29 a.m. until

## Cohen-Summation

1 around 3:53. You know that Mr. Kane picked up Martin, Ewing  
2 and Smalls from Third Avenue at 167th Street, because we've  
3 sat together in this courtroom and we've watched this video,  
4 this eerie video, of that fateful moment.

5 (Video playing)

6 MS. COHEN: You watched them get into the cab, and  
7 you watched it drive away. And you know where Mr. Kane drove  
8 them, to Felder's place at Bailey. Ladies and gentlemen, this  
9 is the last video capturing Mr. Kane alive.

10 Felder's phone records show Smalls called Felder to  
11 let him know they were getting close, and then called again  
12 to let Felder know that they had arrived. Cell site confirms  
13 that Smalls and Felder were both in the vicinity of Felder's  
14 apartment on Bailey Avenue at 4:19 a.m. Then everyone's  
15 phones go quiet. Why? Because there's no need for any more  
16 phone calls. There's no need for text messages. Felder,  
17 Martin, Ewing and Smalls are now together in Mr. Kane's cab.  
18 The plan is in motion.

19 Now, you might be asking yourselves, how do I know  
20 that Felder was in the car before Mr. Kane was killed? I'll  
21 show you. Remember that Number 2 on the map that is  
22 Government Exhibit 100 represents Ewing's apartment and where  
23 Mr. Kane picks up Ewing, Martin and Smalls in the cab.  
24 Number 3 is Felder's place at Bailey Avenue. And Number 4 is  
25 Hunter Avenue, where Mr. Kane is carjacked and dies. Video

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1 shows Mr. Kane picking up Ewing, Martin and Smalls at  
2 Location Number 2 around 4:00 a.m. There's no dispute about  
3 that timing. It's right there in a parties' video  
4 stipulation. And as you just saw, phone records and cell  
5 site indicate that Smalls and Felder are at Bailey Avenue  
6 19 minutes later.

7 Ladies and gentlemen, it is quite simply impossible  
8 for Ewing, Martin and Smalls to have carjacked Mr. Kane at  
9 Hunter Avenue, Location Number 4, before going to pick up  
10 Felder. You know that because Detective Marello told you he  
11 drove between those locations in the very early morning  
12 hours, and he told you that it takes at least 15 minutes.  
13 So, given that Mr. Kane picks up Ewing, Martin and Smalls  
14 around 4:00 a.m., the soonest they could have gotten to  
15 Hunter Avenue, where Mr. Kane's body was found, is 4:15 a.m.  
16 And even if that killing took no time at all, the earliest  
17 that Ewing, Martin and Smalls could have gotten to Bailey  
18 Avenue is 4:30 a.m. In other words, it is impossible for  
19 Ewing, Martin and Smalls to have gotten in Mr. Kane's car at  
20 4:00 a.m. and then to have driven to Hunter Avenue, committed  
21 the carjacking, and then have gotten back to Bailey by 4:19.  
22 The only way this evidence fits together is if Mr. Kane drove  
23 Ewing, Martin and Smalls to Bailey Avenue to pick up Felder  
24 and then drove all four of them to Hunter Avenue, where he  
25 was killed. That's exactly what Tommy Smalls told you. And

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1 it is the only explanation consistent with all the other  
2 evidence.

3 The other way you know that Felder participated in  
4 the carjacking is because it is Felder who was with Ewing,  
5 Martin and Smalls for the rest of that morning. The easiest  
6 way for you to tell is to look at the compilation video that  
7 is Government Exhibit 323, which is just clips from video  
8 you've already seen, strung together in chronological order.  
9 I'm going to walk you through that video now.

10 (Video playing)

11 MS. COHEN: Mr. Kane's black Lincoln Town Car is at  
12 the Irish mini mart, not with Mr. Kane behind the wheel, but  
13 with Felder driving, as Mr. Kane lay lifeless at Hunter  
14 Avenue.

15 (Video playing)

16 MS. COHEN: Felder is in a white hat, orange  
17 sweatshirt, white T-shirt and baggy jeans, black sneakers with  
18 white emblems on them. He runs up to the mini mart, hiking  
19 his pants up. You get a good view of his white hat, orange  
20 sweatshirt and black mask as Felder puts his head in the door,  
21 tells his crew to hustle. Felder and the others return to  
22 Mr. Kane's car with their loot, plus the bleach and the mini  
23 mart owner's iPhone in hand.

24 (Video playing)

25 MS. COHEN: Video again captures Felder and his crew

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1 as they walk away from Kane's bleach-soaked Lincoln Town Car,  
2 carrying the loot from the robberies but forgetting the mini  
3 mart's iPhone -- mini mart owner's iPhone back in the car.

4 As they walk down the street, you can see Felder,  
5 still in his orange sweatshirt, white T-shirt and black  
6 sneakers with white emblems, baggy jeans that he has to hike  
7 up again. His white hat is now on Martin, and Ewing carries  
8 the bag of money. Felder, Martin, Ewing and Smalls walk  
9 across River Avenue at 150th Street, heading for a cab.

10 (Video playing)

11 MS. COHEN: Just 11 minutes later, Ewing, Smalls,  
12 Felder and Martin return to Ewing's apartment, too fast to  
13 have gotten there by walking, but as Detective Marello told  
14 you, exactly how long it takes to drive to Ewing's building  
15 from River and 150th Street. Their faces aren't covered,  
16 plain for you to see. Felder has ditched his orange  
17 sweatshirt. But, ladies and gentlemen, I know that's not  
18 enough to fool you.

19 (Video playing)

20 MS. COHEN: You've seen those baggy jeans before.  
21 You've seen those black sneakers with white emblems. Not only  
22 that, but you've seen that Felder walks into the building with  
23 something dark in his hand. You see, if you look in his right  
24 hand, he's passed it from left to right as they walk in.

25 (Video playing)

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1 MS. COHEN: They go to Ewing's apartment on the  
2 ninth floor. And when they get to the ninth floor, what does  
3 Felder do? He throws that item out. Go into the trash room  
4 with Ewing, Martin and Smalls, who are throwing out the  
5 clothes they wore to carjack and to rob.

6 (Video playing)

7 MS. COHEN: Ladies and gentlemen, Felder's phone  
8 records, the cell site evidence, dozens of videos, and witness  
9 testimony all show that Felder participated in the August 5th  
10 carjacking of Mr. Kane. The first element of carjacking is  
11 satisfied.

12 Let's talk about the second element, that the  
13 vehicle was taken by force or violence. You know that  
14 violence was used. You watched Felder and his crew chase  
15 down Mr. Bah's cab on Bryant Avenue and throw his lifeless  
16 body into the street. You've seen the gruesome crime scenes,  
17 not just on Bryant Avenue, but also on Hunter. Mr. Kane and  
18 Mr. Bah each found shot through the head, their bodies miles  
19 away from their cars. There is no clearer example of using  
20 violence than that. The second element is satisfied.

21 The third element of carjacking is that the  
22 Defendant acted with intent to cause death or serious bodily  
23 harm. Let me be clear, this is not a murder charge. You do  
24 not have to find that the victims' deaths were premeditated.  
25 Instead, I expect that Judge Briccetti will instruct you that



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1 you must decide whether, during the carjacking, Felder  
2 intended to use violence himself or intended that someone  
3 else in the crew would.

4 Let's start with August 12th again. You know that  
5 on August 12th, Felder was willing to have someone in his  
6 crew take Mr. Bah's cab by force, if necessary. You know  
7 that because exactly one week earlier, Felder participated in  
8 a carjacking with the same three men, and the cab driver in  
9 that carjacking was shot and killed. As the video makes  
10 clear, no one forced Felder to show up on August 12th, and  
11 Felder could not have shown up for the August 12th carjacking  
12 without at least being willing to use force, just as he had  
13 done the week earlier.

14 In the same way, Felder's participation in the  
15 August 12th carjacking shows his mindset on August 5th. If  
16 he was not prepared to use force against Mr. Kane on  
17 August 5th, if that had shocked him, why did he willingly  
18 show up on August 12th, a smile on his face? The answer,  
19 ladies and gentlemen, is he knew exactly what could happen  
20 during both of those carjackings, and he was prepared to use  
21 violence. The third element is satisfied.

22 The fourth element you must find is that Mr. Kane  
23 and Mr. Bah's vehicles traveled in interstate commerce. You  
24 know that element is satisfied because the parties agreed  
25 that employees of Ford and Toyota would testify that

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1 Mr. Kane's Lincoln Town Car and Mr. Bah's Toyota were both  
2 manufactured outside the state of New York. The fourth  
3 element is also satisfied.

4 Felder is guilty of both carjacking counts.

5 There will be one additional question that you'll  
6 have to answer about those carjacking counts. You must  
7 decide whether Mr. Kane and Mr. Bah's deaths were the result  
8 of actions taken during the carjackings. This is another  
9 very straightforward element. You see here Dr. Prial's  
10 testimony. The TR that you see is just a reference to the  
11 transcript page at which her testimony appears. As Dr. Prial  
12 testified, both Mr. Kane and Mr. Bah died as the result of  
13 gunshots to the head. You also saw and heard evidence that  
14 Mr. Kane and Mr. Bah received those deadly wounds at the  
15 sites of their carjackings.

16 Now, there's another point of the law that I want  
17 to be very clear on, and it's the second point on this slide.  
18 The Government is not required to prove that Felder intended  
19 to cause Mr. Kane and Mr. Bah's deaths, nor is the Government  
20 required to prove who killed Mr. Kane or Mr. Bah. It is  
21 enough that you know the victims were killed as a result of  
22 the carjackings in which Felder participated.

23 But, of course, you know exactly what happened on  
24 August 5th and August 12th. You know how Mr. Kane and  
25 Mr. Bah were killed. Tommy Smalls spent Tuesday on that

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1 witness stand telling you the details of both of those  
2 carjackings, and he told you in no uncertain terms that  
3 Felder shot both of those men.

4 Let me spend a minute now talking about Tommy  
5 Smalls. I expect Judge Briccetti will tell you that you  
6 should carefully evaluate the testimony of cooperating  
7 witnesses. That means Tommy Smalls. And you should evaluate  
8 his testimony carefully. When you do, you will find lots of  
9 reasons to credit it.

10 Ladies and gentlemen, there is no question that  
11 Tommy Smalls participated in truly horrific crimes. No one  
12 is asking you to like him, and, certainly, no one is asking  
13 you to excuse anything that he has done. That's why he's  
14 facing up to a lifetime in jail, and why Judge Briccetti is  
15 free to give Smalls exactly that. But Smalls has admitted  
16 his crimes. He took the stand and told you what happened on  
17 August 5th and August 12th, ready to accept whatever  
18 punishment he receives.

19 So, why should you credit his testimony? Let's  
20 start with his demeanor. Smalls had no problem admitting to  
21 his crimes when he was asked about them on the stand. The  
22 same was true whether he was answering questions from  
23 Mr. Chow or from Felder's lawyers. Smalls told you things  
24 that, frankly, make him look bad and that he could have  
25 easily kept to himself. But he told you those things because

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1 he knows he has to tell the truth, the whole truth.

2 For example, he told you he actually recruited  
3 Ewing to do the carjackings and robberies on August 5th. He  
4 admitted to carrying one of the two guns on August 12th,  
5 something you would have otherwise never known. And he was  
6 totally candid about knowing that the victim of the  
7 August 12th carjacking might get killed, because that's what  
8 happened on August 5th. As horrifying as those crimes were,  
9 Smalls wasn't hiding a thing when he testified.

10 You should also credit his testimony because he has  
11 every reason to tell the truth. I wanna talk very carefully  
12 about the sequence of events that led to Smalls entering into  
13 a cooperation agreement in this case. That sequence is  
14 really important. Before Smalls had a cooperation agreement,  
15 he pled guilty to carjacking Mr. Kane and Mr. Bah. As part  
16 of that plea, Smalls admitted the same facts you heard from  
17 the witness stand, including that Felder shot both of those  
18 innocent cab drivers. As a result of that plea, Smalls faced  
19 no mandatory minimum, and the maximum sentence he was facing  
20 was 30 years.

21 Ladies and gentlemen, he traded that plea for a  
22 cooperation agreement. And you know what that cooperation  
23 agreement says? Judge Briccetti can give Smalls a lot more  
24 than 30 years. He can give Smalls life. You know what else  
25 it says? If Smalls lies, the Judge has no discretion but to

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1 send Smalls to jail for no less than 132 years. As Smalls  
2 told you himself, the only thing that will make a difference  
3 for him at sentencing is his truthfulness, not the outcome of  
4 this case.

5 So, why would Smalls trade a thirty-year plea for  
6 an agreement that lets the Judge send him to jail for the  
7 rest of his life if he was just going to get up there and lie  
8 in front of the judge that's going to sentence him? He  
9 wouldn't.

10 Now, Smalls did tell you that when he first came in  
11 to talk to the Government, back in January of 2017, he said  
12 that Felder wasn't there for the August 5th carjacking. Why  
13 did he do that? Because Felder was like a brother to him.  
14 Felder was his day one. Back in January 2017, Smalls thought  
15 that because Felder wasn't on video leaving Ewing's apartment  
16 with the rest of the crew on August 5th, Smalls could lie and  
17 protect Felder. But for all the reasons we've talked about  
18 this morning, the cell site, phone records, video, Smalls was  
19 wrong. There is no protecting Felder. Smalls knows that.  
20 He knew that when he pled guilty the first time. He knew  
21 that when he signed his cooperation agreement. And he knows  
22 that now. So do you.

23 One last point on Smalls. You should credit his  
24 testimony because it's backed up by all the other evidence in  
25 this case. Here are just a few examples. You know from the

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1 phone records and the cell site that Felder was with Smalls  
2 both on August 5th and on August 12th. You know that the  
3 location of Mr. Kane's body on Hunter Avenue makes perfect  
4 sense, given what Smalls says happened when they were out  
5 there. That Mr. Kane drove to the dead end, did a U-turn,  
6 came back, before being pulled out of the driver's side of  
7 the car and killed between the two driver's side doors. And  
8 you know everyone was sitting in Mr. Bah's cab on August 12th  
9 in exactly the order that Smalls told you, because that's how  
10 you see them running down Bryant Avenue.

11 Ladies and gentlemen, you know Felder shot and  
12 killed Mr. Kane and Mr. Bah. And you certainly know, even  
13 before hearing from Smalls, that both of those victims died  
14 as a result of the carjackings that Felder and his crew  
15 committed.

16 Ladies and gentlemen, each of the elements of  
17 carjacking is satisfied. Felder is guilty of the fatal  
18 carjackings of Mr. Kane and Mr. Bah, as charged in Counts One  
19 and Seven of the Indictment.

20 So, now I would like to move to the robberies of  
21 the Irish Mini Mart and the Dunkin' Donuts. You know from  
22 watching the video of these robberies that Felder was the  
23 getaway car driver. He did not personally carry money or  
24 other property out of those stores. What he did do was aid  
25 and abet those robberies; and for that, he's guilty of Counts

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1 Three and Five of the Indictment.

2 Aiding and abetting is a legal phrase for a  
3 straightforward concept. I expect Judge Briccetti will  
4 instruct you that a defendant can be convicted of a crime if  
5 he helped someone else commit that crime. The getaway car  
6 driver can't avoid punishment just because he didn't  
7 personally grab cash out of the register. Neither can  
8 someone who helps carjack a car to get the robbers where they  
9 are going, especially when he kills the driver. Of course,  
10 you have to find that someone committed the charged robberies  
11 in order to find that Felder aided and abetted them. And you  
12 certainly know that someone robbed the Irish Mini Mart and  
13 the Dunkin' Donuts because you watched those robberies on  
14 video and you heard directly from the victims.

15 But how do you know those robberies violated  
16 federal law? Let's talk about the elements, starting with  
17 the first. You know that the first element is satisfied  
18 because in both robberies, Felder's crew took someone else's  
19 property. In the mini mart, they robbed the register, they  
20 stole the change from under the counter, and they took  
21 bleach, all belonging to the mini mart. And in the Dunkin'  
22 Donuts, they stole cash from the register and from under the  
23 counter. The first element is satisfied.

24 You also know that the second element is satisfied  
25 because in both robberies, Felder's crew took that money and

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1 property by force. At the mini mart, they pointed their guns  
2 at Mr. Yahia's head and at his worker, Harry. Remember Miss  
3 Colavecchio was at the mini mart only to buy her father  
4 breakfast? They hit her over the head with a gun. And at  
5 the Dunkin' Donuts, they again pointed their guns at the  
6 store employees, this time at Mr. Jacob and his coworker, and  
7 chased them into a bathroom. The second element is  
8 satisfied.

9 Finally, you know that the third element is  
10 satisfied because the parties agreed that both of those  
11 robberies affected interstate commerce.

12 So, ladies and gentlemen, you know that the  
13 robberies of the Irish Mini Mart and the Dunkin' Donuts  
14 committed by Martin, Smalls and Ewing violated federal law.  
15 The remaining question for you is whether Felder unlawfully  
16 and knowingly aided and abetted those robberies.

17 To start, you know that Ewing, Martin and Smalls  
18 didn't go to the robberies alone. The mini mart -- the video  
19 shows you that there's a fourth man, a getaway car driver.  
20 And video from the Dunkin' Donuts shows you the same thing.  
21 How else does Mr. Kane's cab back up outside the Dunkin'  
22 Donuts while Ewing, Martin and Smalls are all inside? So,  
23 it's clear, there was a fourth person at both of those  
24 robberies. And you know that fourth man was Felder for the  
25 same reasons you know that Felder was part of the brutal



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1 carjacking and killing of Maodo Kane earlier that morning.  
2 I've walked you through all of that evidence when we talked  
3 about the carjackings, and I won't go through all of it  
4 again.

5 Ladies and gentlemen, because Felder was the  
6 getaway car driver on August 5th, he is guilty of aiding and  
7 abetting the robberies, the Irish Mini Mart and the Dunkin'  
8 Donuts, as charged in Counts Three and Five of the  
9 Indictment.

10 Let's talk about the firearms offenses. As I  
11 mentioned earlier, Felder is charged with four separate  
12 firearms offenses, two relating to the carrying and use of a  
13 firearm during each of the carjackings, and two relating to  
14 the carrying and use of firearms during each of the  
15 robberies.

16 I expect that these are the elements Judge  
17 Briccetti will instruct you on. We can easily check off the  
18 first and second elements you see here for all four of the  
19 firearms offenses. Putting aside for the moment who carried  
20 and used firearms during the carjackings and robberies, there  
21 is no question that firearms were used. You know that  
22 Mr. Kane and Mr. Bah were each killed by a gunshot to the  
23 head. And you watched on video as three different handguns  
24 were pointed at the terrified folks in the mini mart and the  
25 Dunkin' Donuts. The victims of those robberies told you

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1 exactly that.

2 (Video playing)

3 MS. COHEN: The first element is satisfied.

4 The second element requires that the firearm be  
5 used or carried during a crime of violence. We can check  
6 that second element off too. That's because I expect Judge  
7 Briccetti will instruct you that the carjackings of Mr. Kane  
8 and Mr. Bah and the robberies at the Irish Mini Mart and the  
9 Dunkin' Donuts are all crimes of violence under the law. And  
10 on the question of whether the use or carrying of firearms  
11 was during those crimes, we just talked about that when we  
12 talked about the first element. Firearms were unquestionably  
13 used during the carjackings and the robberies. The second  
14 element is also satisfied.

15 Let's turn to the third element, whether the  
16 Defendant acted knowingly and unlawfully. This is a good  
17 point to also talk about who used or carried guns during the  
18 robberies and carjackings. Let's start with the firearms  
19 offenses tied to the August 5th robberies. As I've already  
20 said this morning, Felder didn't walk into those stores and  
21 steal anything with his own two hands. He was the getaway  
22 car driver. So, when you consider the firearms offenses tied  
23 to the robberies, you should consider whether Felder aided  
24 and abetted the use of firearms by other members of his crew  
25 during those robberies. I expect Judge Briccetti to instruct

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1 you that in order to aid and abet any of the firearms  
2 offenses, Felder had to have advance knowledge that someone  
3 else would use or carry firearms during those crimes.  
4 Advance knowledge just means knowledge at a time when Felder  
5 could attempt to alter the plan or withdraw from it.

6           So, let's talk about what Felder knew at the time  
7 of the August 5th robberies. To start, the use of the  
8 firearms during the robberies couldn't have been a surprise  
9 to Felder because he had just used one of those guns to kill  
10 Mr. Kane. Felder certainly didn't withdraw from the robbery  
11 plan after Mr. Kane got killed. What did he do? He drove  
12 the crew to the Irish Mini Mart and he gave them the guns to  
13 commit that robbery. When Felder came to the mini mart door,  
14 he saw his crew pointing those guns at the robbery victims.  
15 He didn't walk away then either. Instead, he loaded everyone  
16 back into Mr. Kane's cab and drove them to the Dunkin' Donuts  
17 for the next armed robbery. Ladies and gentlemen, there is  
18 no reasonable argument that Felder didn't know guns would be  
19 used during the August 5th robberies.

20           So, let's turn to the firearms offenses related to  
21 the carjackings. As I said earlier, when I talked to you  
22 about the carjacking offenses themselves, you don't need to  
23 decide who shot Mr. Kane and Mr. Bah. The same is true for  
24 these firearms offenses. Felder is guilty of these crimes,  
25 no matter who shot those victims, so long as Felder used or

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1 carried a firearm or aided and abetted one of his crew  
2 members in doing the same. But as I've also said, you do, in  
3 fact, know that Felder shot both of the victims. So, you  
4 also know that he personally used a firearm during each of  
5 those crimes. You know that he used a firearm because Tommy  
6 Smalls told you. And you know that because on August 12th,  
7 you actually saw Felder with a gun in his hand.

8 Remember the video from 735 Bryant Avenue where  
9 Felder leads the charge as they chase Mr. Bah's cab down the  
10 street? You saw how Felder ran, and you know that's not  
11 normal. Instead of letting his arms swing at his side, he's  
12 got his hands clutched at his stomach. Ladies and gentlemen,  
13 you know why he's doing that. He's doing that because he's  
14 carrying a gun that he doesn't want to fall out. And when  
15 they get to IS-131 over between Underhill and Bolton, Felder  
16 has got the gun in his left hand as he takes off the hooded  
17 sweatshirt where he was concealing it. You can see it from  
18 both the front and the back as he runs towards the dumpsters.

19 (Video playing)

20 So, ladies and gentlemen, you know that Felder  
21 personally carried and used firearms during both of the  
22 carjackings. That makes him guilty of those firearms  
23 offenses. The third and final element is satisfied.

24 That brings us to a final thing you need to  
25 consider on the firearms counts. I expect Judge Briccetti to

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1 tell you that after concluding that the Defendant used or  
2 aided and abetted the use of firearms during the carjackings  
3 and robberies, you also need to answer an additional question  
4 about how those firearms were used.

5 For the August 5th robberies, you need to decide  
6 whether Felder aided and abetted the brandishing of a  
7 firearm. Here is what I expect Judge Briccetti to tell you  
8 about brandishing. You know that Felder is guilty of exactly  
9 that for all of the reasons we've talked about. The only  
10 thing I'll add is this: Why would you bring guns to a  
11 robbery if you didn't plan to use them? What is the point of  
12 carrying a gun into a mini mart or a Dunkin' Donuts if you're  
13 just going to keep it in your hoodie pocket? You bring guns  
14 to a robbery, ladies and gentlemen, 'cause you're going to  
15 use them. Period.

16 Let's turn from the robberies to the carjackings.  
17 For both carjackings, you need to decide whether a firearm  
18 was discharged. Here is what I expect Judge Briccetti will  
19 tell you about discharge. Ladies and gentlemen, there is no  
20 question that guns were discharged during each carjacking.  
21 You've seen the shell casings, and you heard from Dr. Prial  
22 that both Mr. Kane and Mr. Bah were killed as a result of  
23 gunshots to the head.

24 Finally, I wanna talk to you about the robbery  
25 conspiracy count. As Judge Briccetti will tell you, a

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1 conspiracy is really just the legal term for an agreement to  
2 commit a crime. Ladies and gentlemen, you know exactly what  
3 that agreement was in August of 2014, to carjack cars and  
4 then use those cars to go rob businesses. And you know that  
5 Felder was part of that agreement. You know that was the  
6 agreement because you saw that agreement turn into a  
7 carjacking and two armed robberies on August 5th, and you saw  
8 the beginnings of that agreement put in motion on  
9 August 12th.

10 Remember, the only reason that the August 12th  
11 carjacking didn't lead to any robberies is because the  
12 carjacking went bad. Mr. Bah was killed inside the cab,  
13 leaving the driver's seat covered in blood. The car itself  
14 was all banged up. And when Felder, Martin, Ewing and Smalls  
15 heard police sirens, they decided just to ditch the car. But  
16 as piece after piece of evidence shows, the agreement was to  
17 do on August 12th exactly what Felder, Martin, Ewing and  
18 Smalls had done on August 5th. As Tommy Smalls told you, to  
19 do it the same way we did it last time. Ladies and  
20 gentlemen, just reaching that agreement is a crime.

21 Let's talk about three other reasons you know that  
22 Felder agreed to carjack cars to use in robberies: planning,  
23 Felder's friendship with the other members in the crew, and  
24 Felder's role as the leader. Let's start with evidence of  
25 planning. You know that on August 5th, Felder, Smalls and

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1 Martin were at River Park Towers talking, planning. Cell  
2 site shows you that. You know that when they leave River  
3 Park Towers and Felder doesn't go to Ewing's apartment, he  
4 does that because the plan requires guns. So, Felder has to  
5 go back to Bailey to get those guns. But Felder stays in  
6 close touch, talking to his crew 11 more times before they  
7 come pick him up at Bailey. All of that phone contact is for  
8 one purpose, ladies and gentlemen, and you know what that  
9 purpose is, so that Felder is ready to go when Ewing, Martin  
10 and Smalls, now in Mr. Kane's cab, come to Bailey Avenue to  
11 pick Felder up. What does ready to go mean? It means Felder  
12 has his orange hoodie and his white hat. It means he has his  
13 black mask. It means he has the guns.

14 Now, there's a lot of evidence that all of this  
15 planning wasn't just to take an innocent ride in a cab. Take  
16 as an example the video of Ewing, Martin and Smalls first  
17 leaving Ewing's apartment to hail a cab. Let's start at the  
18 top. First, who needs purple latex gloves unless you're  
19 planning to go commit crimes when you don't want your  
20 fingerprints to be found? Second, they don't walk down the  
21 street and stand together the way you would, for example, if  
22 you were just out with friends. No. They split up, knowing  
23 that a cab driver is more likely to stop for one or two  
24 people than he is to stop for three.

25 How else do you know that Felder wasn't making

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1 innocent plans? You saw him right there with the rest of the  
2 crew throwing evidence down the trash chute across from  
3 Ewing's apartment. If Felder had nothing to do with the  
4 August 5th carjacking and robberies, why did he suddenly show  
5 up at Ewing's apartment with something that he just had to  
6 get in the trash chute? Your common sense tells you that  
7 makes no sense. Felder was there in the trash room because  
8 he was there with Martin, Ewing and Smalls at the carjacking.  
9 He was there at both of the robberies. He was there when  
10 they ditched Mr. Kane's cab under the Deegan. And he came  
11 back to Ewing's apartment to finish getting rid of evidence  
12 and to split up the loot.

13 Now, of course you know the conspiracy doesn't end  
14 on August 5th. Phone records, cell site and video from  
15 exactly one week later show you that the agreement to carjack  
16 and rob was still in action, and Felder is right in the  
17 middle of that too.

18 August 12th starts at River Park Towers, just like  
19 August 5th. Martin, Ewing and Smalls are talking, planning.  
20 Remember these text messages? Felder tells Ewing he's coming  
21 down. What does Ewing do? He tells Martin that Felder is on  
22 his way, so they can all get going. And they do. You  
23 watched Ewing, Martin, Smalls and Felder walk into Ewing's  
24 building. And you know they don't just happen to come back  
25 to Ewing's apartment. They came back to change into clothes



## Cohen-Summation

1 for the planned jewelry store robbery. You know that for a  
2 couple of reasons. You saw Smalls go out to get a sweatshirt  
3 to wear, instead of the jersey he had on. And then you saw  
4 for yourself Martin, Ewing, Smalls and Felder come out of  
5 Ewing's building. Like on the 5th, they're split into two  
6 different groups. And like on the 5th, they've changed into  
7 their carjacking clothes, just like Smalls told you when he  
8 testified.

9           You know that the reason they came out in two  
10 groups was because Ewing and Martin were supposed to look for  
11 a cab while Smalls and Felder waited in the apartment with  
12 the guns. That matches up with the phone records, which show  
13 that Ewing, using Smalls' phone, calls Ewing's apartment  
14 repeatedly to keep Felder and Smalls updated before Felder  
15 and Smalls meet the rest of the crew out on Third Avenue.

16           You also know getting in Mr. Bah's cab and going to  
17 Hunts Point, that was part of the plan. Remember Mr. Barrie  
18 told you the four men who flagged him down? Where did they  
19 wanna go? Hunts Point. And while the rest of the day didn't  
20 go according to plan, you know that Felder worked with the  
21 others to clean that situation up. You watched the four of  
22 them throw their hoodies, gloves and backpack into the  
23 dumpster together. You watched them split up, just like they  
24 did at the start of the day, to get cabs back to Ewing's  
25 apartment building. And then you saw Felder go back to the

## Cohen-Summation

1     dumpsters to make sure that the evidence of their crimes was  
2     destroyed.

3             Ladies and gentlemen, you know there was an  
4     agreement to carjack cars in order to commit robberies  
5     because you saw that agreement in action. And you know  
6     Felder was a member of that agreement because you saw him  
7     participate in each and every step along the way. Not once,  
8     twice. You also know that August 5th and August 12th are  
9     linked through ballistics. Remember Detective Fox? He told  
10    you that the gun that was used to kill Mr. Kane and the gun  
11    that was used to kill Mr. Bah were both used in an earlier  
12    shooting in the Bronx. That's not a coincidence. That's  
13    evidence that the guns that killed Mr. Kane and Mr. Bah, and  
14    so those two crimes are connected.

15            Let's talk for a minute now about how do you know  
16    that the substance of the agreement to carjack cars to use in  
17    the robberies wasn't a surprise to Felder. Of course, as  
18    I've said, you know that because he shows up on August 12th  
19    with a smile on his face, ready to do exactly what he had  
20    done on August 5th. There are other reasons too.

21            Let's talk about Felder's friendship. First, you  
22    know who Felder committed those crimes with, his close  
23    friends. Ewing, Martin and Smalls aren't strangers to  
24    Felder. They're not planning an armed carjacking and armed  
25    robberies and keeping that important fact from him. That's

## Cohen-Summation

1 not just true because the four of them are friends, it's true  
2 because Felder is the leader in the group. How do you know  
3 that?

4 Remember Miss Washington? She knew Felder and each  
5 of the other three members of this conspiracy, Martin, Ewing  
6 and Smalls. She told you that she saw them all the time at  
7 River Park Towers, and she told you that at River Park  
8 Towers, Felder was given a certain level of respect, respect  
9 none of the others got. Remember what she -- when she was  
10 asked how Martin, or Reem, was treated by comparison? "What  
11 about Reem?" That was her answer. Same thing for Smalls.  
12 Felder carried the weight. Felder got the respect.

13 Ladies and gentlemen, even Mr. Figueroa told you  
14 Felder was in charge.

15 The video from the mini mart, where Felder comes to  
16 the door and tells others to hustle, that tells you he is a  
17 leader too. When he tells them to get back to the car, what  
18 do they do? They immediately stop what they're doing and  
19 follow Felder back to Mr. Kane's cab. And on August 12th,  
20 Felder leads the charge down Bryant Avenue. Felder drives  
21 Mr. Bah's cab to Underhill, and he leads the charge away from  
22 the bloody, damaged car. Felder is the first down the  
23 stretch between Underhill and Bolton. And he's the first at  
24 the dumpsters, directing everyone else to throw out their  
25 clothes. And what does everybody do? They listen. Just

## Cohen-Summation

1 like they listened on August 5th, when Felder told them to  
2 hurry up at the mini mart. They take off their hoodies.  
3 They take off their latex gloves. Ewing takes off the black  
4 backpack. Everything goes in the dumpster, and they head to  
5 Stevenson Commons.

6 Ladies and gentlemen, you know there was an  
7 agreement to break the law, an agreement to carjack cars that  
8 could be used to go rob businesses. You know that was the  
9 agreement because you saw two cab drivers out in the Bronx in  
10 the early morning hours, just trying to earn a living, who  
11 lost their lives because of this plan. You know that was the  
12 plan because you watched two armed robberies and you heard  
13 from three separate victims terrorized by those robberies.  
14 And you know Felder was a part of that plan, from start to  
15 finish. You know that Felder is guilty of the robbery  
16 conspiracy in Count Nine.

17 Before I sit down, let's take a step back and just  
18 talk in simple terms about what you know. Over the course of  
19 a single week in August 2014, two livery cab drivers were  
20 brutally killed, each with a single bullet to the back of his  
21 head. They were killed for no other reason than to steal  
22 their cars. Between these two violent carjackings were two  
23 armed robberies in Yonkers, robberies that left victims  
24 wondering if they would spend the last moments of their lives  
25 looking down the barrel of a gun.

## Cohen-Summation

1 Ladies and gentlemen, you know that the same crew  
2 of four men committed each of those fatal carjackings and  
3 each of those terrifying armed robberies. And for all the  
4 reasons we've talked about this morning, you know that Tyrone  
5 Felder was the leader of that crew. You know that Felder is  
6 responsible for the death of Maodo Kane. You know that  
7 Felder is responsible for the death of Aboubacar Bah. You  
8 know that Felder is responsible for the two gunpoint  
9 robberies in between. Ladies and gentlemen, hold Felder  
10 responsible. Find him guilty as charged.

11 THE COURT: Okay. Thank you, Ms. Cohen.

12 Ladies and gentlemen, I think we'll take a break  
13 now. And then, I'm told that Mr. Ruhnke is going to --

14 MR. RUHNKE: Yes, sir.

15 THE COURT: -- sum up for the Defense.

16 So, let's take a few minutes for Mr. Ruhnke to get  
17 himself situated for that. Give you a chance to stretch. We  
18 will take 15 minutes. Keep an open mind. Don't discuss the  
19 case. The case has not been submitted to you yet, so it's  
20 too soon to start talking about the case.

21 All right. We'll see you in 15.

22 (Jury not present in the courtroom)

23 MR. RUHNKE: Your Honor.

24 THE COURT: Yes, sir.

25 Sit down, everybody.

Cohen-Summation

1 MR. RUHNKE: Your Honor, I'm sorry to have stopped  
2 you leaving the bench, but I'm somewhat frustrated by the fact  
3 that the Court's technical staff cannot get my laptop hooked  
4 into this display system beyond the projector. This is the  
5 first experience I've ever had where the defense doesn't have  
6 access to display something, and I'm wondering if someone can  
7 make one last try to get me --

8 THE COURT: How much time have you had to deal with  
9 this? Couple of weeks? That's enough.

10 MR. RUHNKE: I was dealing with it yesterday and the  
11 day before yesterday.

12 THE COURT: Look, I don't know anything about it.  
13 You can do whatever you want to get ready for your summation.  
14 We are going to go ahead with the summation in 15 minutes.

15 MR. RUHNKE: Okay.

16 THE COURT: What do you want me to do? You want me  
17 to do it?

18 MR. RUHNKE: I just -- no, no, no. I just want the  
19 technical staff to come up. If I'm limited to using the  
20 projector, I may want to move the podium a little bit so I'm  
21 not blocking --

22 THE COURT: You can move the podium anywhere you  
23 want. What do you want me to do, Mr. Ruhnke, exactly? Tell  
24 me exactly what you want me to do, okay?

25 MR. RUHNKE: I'd like somebody to --

Cohen-Summation

1 THE COURT: Then I will decide whether I'll do it.

2 MR. RUHNKE: Yeah. I would like somebody in the  
3 15 minutes to come up and try again to hook me into this  
4 system. Thank you.

5 THE COURT: Good luck.

6 (Recess)

7 (Jury not present in the courtroom)

8 THE COURT: Have a seat, everybody.

9 Ready to proceed, Mr. Ruhnke?

10 MR. RUHNKE: Yes. And with the assistance --

11 THE COURT: Are you ready for -- to proceed? That's  
12 a yes or no.

13 MR. RUHNKE: Yes.

14 THE COURT: Okay. Great. Let's get the jury.

15 MR. RUHNKE: And, Your Honor, I just want to thank  
16 the Government for helping this happen when they did. I  
17 wanted that to be on the record, but it doesn't matter.

18 THE COURT: Okay. That, that can be on the record  
19 as well.

20 (Jury present in the courtroom)

21 THE COURT: Okay. Welcome back, everybody.

22 Please have a seat.

23 You may proceed.

24 MR. RUHNKE: Thank you. May it please the Court,  
25 and good morning, ladies and gentlemen of the jury.

## Ruhnke-Summation

1           This is the first chance I've had to speak with you  
2 all directly. You see me in court, but I'll remind you that  
3 I'm David Ruhnke, and I am one of the three attorneys who  
4 represent Tyrone Felder. And I am here this morning to tell  
5 you in a relatively brief period of time, I hope, that the  
6 evidence in this case has not established that Tyrone Felder  
7 is guilty of any of the crimes beyond a reasonable doubt with  
8 which he is -- of which he is accused.

9           So, we've used that phrase "beyond a reasonable  
10 doubt," and you've heard it time and again. So, the question  
11 naturally is going to arise: Well, what do we mean by  
12 "beyond a reasonable doubt"? How sure do you have to be is  
13 another way of -- of asking that question.

14           Well, the answer to that will not come from me, but  
15 it will come from Judge Briccetti who will define for you  
16 what it means to have a reasonable doubt about the truth of  
17 anything. Suffice it to say, you have to be very sure. You  
18 have to be so sure that if this was something that was  
19 important to you, in your own life, you would not hesitate to  
20 go ahead and say, "Yeah, I'm satisfied."

21           And this morning or this afternoon or tomorrow or  
22 whenever you conclude your deliberations, you are going to be  
23 asked to make an important decision in the life of another  
24 person, in the life of another fellow human being. And I ask  
25 you to bring to that process the same level of certainty that



## Ruhnke-Summation

1 you would bring in your own lives if you had to make an  
2 important decision that had a drastic impact on you for being  
3 wrong. So thank you for doing that.

4 And thank you for being here. We can't do this  
5 without you. I know jury service can't be easy. I've been  
6 called for jury service and I understand that. And in some  
7 sense, it is -- if it was easy, maybe more countries around  
8 the world would do it. But the United States has chosen this  
9 system even though it may be hard at times.

10 So let's talk about things that fall short of proof  
11 beyond a reasonable doubt. And you will hear from the judge  
12 about this issue of mere presence. You have seen all kinds  
13 of evidence that various witnesses say that that  
14 African-American man in the blurry photograph happens to be  
15 Tyrone Felder because he's wearing clothes that distinguish  
16 him, a hoody and -- and black-and-white sneakers, and that  
17 there were text messages and cell phone calls among these  
18 men. But you also know that they've known each other from  
19 Riverside Park Towers virtually their entire lives. They  
20 talk to one another. They hang out with one another. They  
21 exchange Instagram photographs of them all together, as  
22 friends are want to do.

23 So the fact that somebody is merely present or  
24 merely associates with other people are not crimes. The  
25 Judge will explain this to you further, but I suspect and

## Ruhnke-Summation

1 think that he will tell you that the fact that somebody  
2 associates with other people, even if those other people  
3 happen to be engaged in criminal activity, does not make that  
4 person guilty of a crime unless he is part of it and joins in  
5 with it and shares the intent. The fact that somebody  
6 happens to be there, present, when a crime is being  
7 committed, even knowing that a crime is underway is not proof  
8 beyond a reasonable doubt of criminal liability unless that  
9 person has the same level of intent as the other people he  
10 happens to be associated with.

11 So, here are what I suggest, respectfully, are key  
12 questions you ought to ask yourselves, each other. You don't  
13 have to follow what I'm saying here, but I suggest these are  
14 reasonable and logical questions you might ask as you sit  
15 down in the jury room and review the evidences: What did he  
16 actually do that was criminal, if anything?

17 What did you see on the videos? What did you  
18 hear -- see on the phone records that was criminal? And with  
19 what intent did he act, if he acted at all in a criminal way?

20 And as you explore that question, it logically  
21 becomes, "How do we know that? You know, what's our source  
22 of the information? Where does that come from?"

23 And the fact that people are calling each other on  
24 the cell phones and walking around town together doesn't make  
25 Tyrone Felder guilty of a crime. And when you check out the

Ruhnke-Summation

1 source of the information, you are well to ask yourself:

2 What do we know about the source of the information?

3 One thing for sure we know is the source is not  
4 scientific evidence. One thing we know for sure, it is not  
5 in DNA or fingerprints.

6 You heard from these Crime Scene Unit officers,  
7 veteran members of the New York Police Department who do  
8 important careful work. They gather, they catalog, they keep  
9 safe evidence so that four years later they're able to come  
10 into court and say, "Yeah, on that date in August, I picked  
11 this thing up, I put it in an envelope, I wrote the date on  
12 an envelope, number on it, and, yeah, it's the same thing."  
13 They don't overlook evidence. That's their job.

14 So don't take it from me, but here's what the  
15 testimony was from the Government's DNA expert. Basically,  
16 this, that we sweat on hot days and we contribute DNA.  
17 Basically, that the expert had samples of Tyrone Felder's  
18 DNA, a reference sample of DNA, and the evidence was compared  
19 to everything that had been gathered, all the swabs, and  
20 there were no matches to Tyrone Felder's DNA. That's what  
21 she told you. So, it's not the DNA that's going to help you  
22 reach a conclusion in this case with regards to Tyrone  
23 Felder's guilt or non-guilt of these crimes. Being not  
24 guilty simply means the charges haven't been proved and --  
25 and they haven't been proved beyond a reasonable doubt.

## Ruhnke-Summation

1           The law sets up, as Judge Briccetti will tell you  
2 later today, a presumption that we are all entitled to claim  
3 that we're not guilty, and that never changes unless a jury  
4 of 12 people is convinced beyond a reasonable doubt, that  
5 that presumption no longer applies and the case has been  
6 proven beyond a reasonable doubt.

7           So, what do we know and how do we know? And this  
8 brings us to the Government's witness, Tommy Smalls. This is  
9 from one of the video surveillances of the robberies, and  
10 that is Mr. Smalls in the hoody with the mask on, with the  
11 handgun in his right hand, in action. The Government tells  
12 you this is a person you should rely on and his testimony you  
13 should accept. And I -- I ask respectfully, in your own  
14 lives, if Tommy Smalls told you something and it was  
15 important for you to know whether it was true or not, would  
16 you take his word? And if the answer to that is no, then you  
17 should not take his word here.

18           Here's, again, Mr. Smalls jumping over the counter  
19 on his way to terrorizing the owners, innocent owners of a  
20 store.

21           And a witness like Smalls is in a special place as  
22 far as the law is concerned. And, again, this is what I  
23 expect Judge Briccetti to tell you, but he is the source of  
24 the law and not I. But I expect him to tell you that  
25 witnesses in his position who have made a deal with the

## Ruhnke-Summation

1 Government has a motive to lie, has a motive to fabricate  
2 evidence, and that the testimony of these kind of witnesses  
3 should be considered by you with special care and caution.

4 In other words, be careful before you buy the testimony.

5 And there's more here. You know from the evidence  
6 that Tommy Smalls is not only a liar, but a convicted liar.

7 A liar who committed a felony-level lie. And it was a  
8 monstrous lie, if you stop to -- to analyze it. He met,  
9 you'll recall, with representatives of the Government.

10 Nobody was here at this counsel table now, but in early  
11 January -- I'm sorry, early 2017, January 25, he met with a  
12 group of agents, federal prosecutors, in a small conference  
13 room. We described the scene. And what did he do? He  
14 promised to tell the truth.

15 What did he do when he took his oath here? He  
16 promised to tell the truth. And here's what he told the  
17 Government: That Felder wasn't even there on August 5, 2014,  
18 because this was a break -- and later on he explains, this  
19 was a break he was giving Felder and he would just tell them  
20 that he committed one murder instead of two as some kind  
21 of -- of break. If that makes any sense to you, ladies and  
22 gentlemen, I leave that to you.

23 He also told them this: He said the cab driver was  
24 killed directly by Kareem Martin. Now, he tells you that's a  
25 lie. And what happens when a liar tells you something is the

## Ruhnke-Summation

1 truth? It's up to you to decide what you wanna do with that.

2 I would suggest with regard to Tommy Smalls that  
3 you could go back to the jury room and say, look, when it  
4 comes to Smalls, he gave up his right to be believed as a  
5 witness when he deliberately lied to representatives of the  
6 Government who now call him as a witness despite being lied  
7 to, when he implicated someone he now says is innocent. And  
8 you don't know that. I mean, you know that's what he says.  
9 He says, "When I said Martin killed the driver, that was a  
10 lie." So his version of truth is "I'm the kind of person who  
11 could implicate an innocent person in -- in murder."

12 And it went beyond that, didn't it? Remember his  
13 testimony that he got together with his other co-defendant,  
14 Takiem Ewing, together in the jail, and they decided that  
15 they would tell that same story if Ewing decided to speak  
16 with the Government. In other words, they would get together  
17 and conspire to tell a lie implicating an innocent person.

18 He also told you the reason he named Martin was  
19 that Martin had come to him in the jail and told him, "You  
20 know, Tommy, you have to plead guilty to one of these  
21 murders," and that upset him and that was a reason that he  
22 lied.

23 So he first told that lie, if it is a lie, on  
24 January 25. And that's part of the problem is you don't know  
25 when a liar is lying. And then on July 13, 2007, now says,

## Ruhnke-Summation

1 "I lied."

2 You know, one thing that's consistent, however,  
3 about his two versions of what happens is he keeps himself  
4 out of either of direct hands-on responsibility for the  
5 murders.

6 And so what about that previous promise? This is  
7 from the trial transcript. The question is referring to that  
8 first proffer session, meeting with the Government and the  
9 agents in January of 2017.

10 "You were encouraged by everyone there. If there  
11 was one thing you were supposed to do was absolutely tell the  
12 truth, correct?"

13 He says, "Correct."

14 And you agreed that you would do that, correct?

15 "Correct."

16 " And you broke that promise, didn't you?"

17 And the answer to that is a yes.

18 And I, again, reiterate that when he took the  
19 witness stand -- when any witness takes the witness stand,  
20 they promise you, they promise everybody in the courtroom  
21 that what they are about to say is the truth.

22 So what do you do with Tommy Smalls, who's a liar,  
23 who says he's telling the truth on September 4, 2018, when he  
24 says, "I'm not lying," and you kinda put in parentheses  
25 afterwards, at least not this time? And what do you do with

Ruhnke-Summation

1 that when you evaluate credibility? Because you don't know  
2 and you can't tell.

3 And then he's a liar, a convicted liar who comes  
4 with a deal with the Government. He faces -- and he told you  
5 this -- a mandatory minimum 132 years in prison unless  
6 something else happens. And here's what he had to say about  
7 that, what this deal means to him.

8 "First, if you were sentenced to this 132 years,  
9 you would die in prison, right?"

10 So he knows without some action on the part of the  
11 Government, he will die in prison. He doesn't like prison.  
12 Nobody likes prison, but he does -- he faces death in prison.

13 And the next question was: "And you also  
14 understand, by mandatory minimum, the law means that the  
15 judge can't change that on his own or her own, it takes  
16 something else before that mandatory minimum can go away,  
17 correct?"

18 And he answers, "Correct."

19 Question: "All right. And the only thing -- is  
20 this your understanding, the only thing that can make it go  
21 away is if the Government presents a letter to the judge  
22 asking that you be treated leniently, correct?"

23 And he says, "Correct."

24 And the question is: "That's your understanding,  
25 correct?" And I -- I asked him to speak up, and he says,

Sue Ghorayeb, Official Court Reporter



Ruhnke-Summation

1 "Yes."

2 And just skipping a couple lines because he didn't  
3 often speak as clearly as I think we would want witnesses  
4 to -- to speak, final question was: "And if the Government  
5 is unhappy with your cooperation and doesn't write that  
6 letter, it's also your understanding that the judge has no  
7 choice but to sentence you to 132 years in prison, up to  
8 life, correct?"

9 And he says that's his understanding, "Correct."  
10 And he knows that that sentence means he will -- he will die  
11 in prison.

12 It is not a crime to associate with other people.  
13 It is not a crime to be present when other people commit a  
14 crime, if you do not join in and want it to succeed and take  
15 actions to succeed. If the Government establishes nothing  
16 more than presence, nothing more than association, that's the  
17 end of the case, because neither of those things are a crime.

18 The crimes in this case are horrible. And no one  
19 in -- in their right mind would stand in front of you and say  
20 anything different. They are not going to be made better by  
21 convicting someone where there's reasonable doubt about their  
22 guilt. You promised us you could do that. Right from the  
23 start you promised us that if the evidence fell short,  
24 nothing in your background, nothing in your world view,  
25 nothing in your own personal opinions about people would stop

Ruhnke-Summation

1 you from returning that verdict. And that's what I'm going  
2 to ask you to do, find Tyrone Felder not guilty of all  
3 charges. Thank you.

4 THE COURT: Great. Thank you, Mr. Ruhnke.

5 Is the Government going to make a rebuttal  
6 summation?

7 MR. SCOTTEN: We will, Your Honor. Thank you.

8 THE COURT: Okay. You ready to go?

9 MR. SCOTTEN: Sure, Your Honor.

10 THE COURT: Okay.

11 MR. SCOTTEN: Good morning. What you heard so far  
12 this morning is an excellent illustration of the difference  
13 between evidence and argument. What Ms. Cohen gave you was  
14 evidence. When she wanted to prove something, she would tell  
15 you what it was and she would point to the exhibits or the  
16 testimony or both that proved it.

17 What Mr. Ruhnke gave you was argument, no reference  
18 to the evidence, and as you can see, because you sat through  
19 this trial, what he said just doesn't match up with the  
20 evidence. You cannot come to a podium and say, "Well, the  
21 video is blurry," and make it so. I think that was the  
22 entirety of his discussion of the two and a half days of  
23 video showing his client in the middle of crimes. That  
24 doesn't make it go away. I mean, I could stare here and say,  
25 "I don't see Judge Briccetti on the bench." I just said it.

## Scotten-Rebuttal

1 Does that make it go away? Of course not. And when you look  
2 at the evidence, it is so clear that this man participated in  
3 a murder of two innocent men, and participated in two  
4 robberies.

5 So let me briefly go through some of the things  
6 Mr. Ruhnke said. He said -- I think this was his main --  
7 maybe his only reference to the evidence, DNA. It's kind of  
8 a weird thing to say because his two main arguments were  
9 there was no DNA and mere presence doesn't prove somebody  
10 guilty. What does DNA tell you? Mere presence. That's all  
11 DNA would -- tells you is if somebody was there. And at no  
12 point did he give you any reason to believe his client was  
13 not there. His client was on video. You saw him the whole  
14 time. How would DNA add to what you already know when he  
15 can't even give you an argument against that Mr. Felder was  
16 obviously there.

17 Now, you also know why there was no DNA. Because  
18 the defendant wore gloves. Because they bleached the first  
19 car. They wiped down the second. They threw out their  
20 clothes. They threw them down the trash chute. That defense  
21 amounts to, Hey, my client is really good at destroying  
22 evidence. That is not a defense. It's not a defense in any  
23 case, but it's definitely not a defense when you are caught  
24 on camera.

25 So let me take a second to discuss this idea of

## Scotten-Rebuttal

1 mere presence. You know he's on camera. Let's talk about  
2 what happens on camera. I'll start with August 5th because  
3 that's where you only see his face after he's done committing  
4 all the crimes.

5 Mr. Ruhnke wants you to believe that it's a  
6 coincidence, that it's mere presence, that he just happens to  
7 be there at 6:00 a.m. with the three guys who came back from  
8 committing those heinous crimes. Think about what you would  
9 have to believe for that to be a coincidence.

10 So first, Felder is talking to the other guys, as  
11 the phone records show, just hours before the crime. Just a  
12 coincidence.

13 Second, when those three guys go off and prepare to  
14 commit these horrible crimes, they're talking to Felder,  
15 literally while they're getting their stuff together, and  
16 only to Felder. Just a coincidence.

17 Third, when they go to commit these crimes, where  
18 do they go? They drive straight to Felder's neighborhood.  
19 Just a coincidence. They call him there two more times.  
20 Those are the last phone calls while Maodo Kane is still  
21 alive. Just a coincidence.

22 Then, a fourth man happens to show up during the  
23 robberies with Mr. Kane's car. Just a coincidence. The  
24 fourth man also seems to be in charge. He's telling people  
25 when to end the robbery. He's the one driving. You've heard

## Scotten-Rebuttal

1 that Felder's kind of in charge of this group, but it's just  
2 a coincidence that this fourth guy is there. We follow him  
3 all the way through the robberies, you see him walking away  
4 down those empty streets by Yankee Stadium, and then boom, by  
5 coincidence, that fourth guy, that terrible criminal is gone  
6 and all of the sudden Felder gets there in 11 minutes, the  
7 exact time it takes to catch a cab ride from near Yankee  
8 Stadium to Ewing's apartment.

9           It gets worse. Here's another coincidence. Felder  
10 just happens to be wearing the same jeans, the same sneakers,  
11 to have the same build as that fourth guy. Terrible  
12 coincidence. The robbers invite Felder upstairs to split the  
13 loot. You saw Ewing with the backpack full of loot, even  
14 though he didn't take part in those crimes.

15           Another coincidence. When the robbers go to throw  
16 out all their clothes, Ewing has to throw out too -- or  
17 sorry, Felder has something to throw out too. And it just  
18 happens to look like the gloves you saw that fourth guy  
19 wearing the whole time.

20           Ladies and gentlemen, to believe in all of those  
21 coincidences, you would have to believe that Felder is the  
22 unluckiest man in the world, and you know he's not. You know  
23 the unluckiest man in the world on August 5th was Maodo Kane,  
24 because he got into a car with Felder and Felder killed him.

25           Now, let me talk much more briefly about this idea

Scotten-Rebuttal

1 of mere presence on August 12th. I'm not going to show you  
2 the video again.

3 Well, how easy would it be to get up 342-C?

4 That is not mere presence. Running down the street  
5 from a dead man's car with a gun in your hand is not mere  
6 presence. I could give you a ton of reasons, but Ms. Cohen  
7 already did, so I won't do it again, that you know he's  
8 involved in that plan from start to finish. Leading the  
9 charge to recover the dead man's cab as it runs down the  
10 street is not mere presence. Destroying evidence, throwing  
11 it in the dumpster, is not mere presence. Having a gun in  
12 your hand is not mere presence. Shooting Mr. Bah in the head  
13 is not mere presence. That was nothing but argument, ladies  
14 and gentlemen. It was entirely empty. And I'm not blaming  
15 Mr. Ruhnke for that. He has an impossible job. His  
16 client --

17 MR. RUHNKE: Objection to that, Your Honor.

18 THE COURT: Well, defense has no obligation to do  
19 anything, as I've told you. He's presumed innocent, currently  
20 presumed innocent unless and until you decide that the  
21 Government has proven each and every element of the crimes  
22 charged beyond a reasonable doubt, and that's what you need to  
23 keep in mind.

24 MR. SCOTTEN: Absolutely. And so look at all the  
25 evidence that you have seen. Do any of those arguments sway

## Scotten-Rebuttal

1    you? Of course not. They didn't even engage with the  
2    evidence. And when the defense chooses to make arguments, you  
3    can look at them the same as any other argument. Those didn't  
4    make any sense. Mere presence? That bears no relation to  
5    what you saw in this case.

6               Now, I do wanna talk briefly about Tommy Smalls  
7    because, as you notice, Mr. Ruhnke spent almost all of his  
8    time talking about Tommy Smalls. There's a reason he did  
9    that. If you believe Tommy Smalls, that alone would be  
10   enough to convict his client. But here's the thing. You  
11   also knew Felder was guilty before you ever heard from  
12   Smalls. You saw the video. You saw the phone records. You  
13   saw the DNA that confirms, yes, Martin is there standing  
14   right next to Felder. You heard from the other witnesses.  
15   You saw the ballistics. So there is literally no fact in  
16   this case that depends in any way on Smalls.

17              Of course, there's another way to look at that,  
18   precisely because at every single important point, Smalls is  
19   corroborated. That is, the other evidence backs him up. It  
20   tells you the same thing he told you. You know that he  
21   testified credibly. Look at it this way. If you read a book  
22   and then after you read the book somebody comes to you and  
23   tells you what the book was about, it doesn't matter whether  
24   you want to trust them or not. You know what the book's  
25   about. That's true even if he points out one or two things

## Scotten-Rebuttal

1 you didn't see in the book. You can go back and look at the  
2 book and it's right there. Just like in this case, you can  
3 go back and look at the video, the ballistics, the call  
4 records and see that it's right there.

5 Now, I suppose there is one thing that I agree with  
6 in Mr. Ruhnke's statement. He said it was a monstrous lie  
7 when Tommy Smalls first spoke to the Government. So what do  
8 we agree is monstrous lie -- or what was that lie? Saying  
9 that Tyrone Felder didn't kill Mr. Kane. We're all agreed,  
10 yeah, that's true, he killed him. And I want to talk a  
11 little bit about that, even though, as you know, it's not a  
12 question you're going to have to decide as to who exactly  
13 killed these two poor men. It is just another good example  
14 of how the evidence backs up what Smalls testified to.

15 First, let's think about August 5th. Notice  
16 something about August 5th. Nobody died except when  
17 Mr. Felder was there. You saw those other three men doing  
18 terrible things, running amuck in stores with guns terrifying  
19 people, but Felder was outside in the car and everybody  
20 lived. It's only when Felder is there that someone is  
21 killed. And you might say, "Well, everyone had a motive to  
22 kill Mr. Kane because presumably Mr. Kane had seen their  
23 faces. You don't get into a cab wearing a mask."

24 But think about who had the most motive to kill  
25 Mr. Kane. The other three men were picked up on the street.



## Scotten-Rebuttal

1   What kind of lead, if they leave Mr. Kane alive, are Martin,  
2   Ewing, and Smalls going to give the police? I saw three  
3   young men. I picked them up on the street. But what about  
4   Felder? They picked Felder up at his home. If Mr. Kane  
5   leaves -- lives, he can tell the police exactly where the man  
6   who carjacked him lives. And you saw during the evidence  
7   Felder's cell phone, Felder's home phone, and his wife's  
8   phone all come back to that address, leaves Kane living, it  
9   presents the greatest threat to Mr. Felder.

10           And now, let's think about what happened on the  
11   12th. Tommy Smalls told you that Felder shot Mr. Bah as he  
12   was exiting the rear right passenger seat and starting to  
13   fall down because Mr. Bah hit the gas. Think about what the  
14   ballistics evidence told you or, really, the medical evidence  
15   of how the bullet traveled. Dr. Prial testified the bullet  
16   fired by the person who killed Mr. Bah left no stippling.  
17   That's the -- that's what's left on a person when a bullet is  
18   fired within 2 feet. Well, here, you know it was fired  
19   within the car because no windows were broken. The bullet  
20   didn't come from outside. And the shooter had to be far  
21   enough away not to leave stippling. There's almost no way in  
22   the car you could do that except as you're falling backwards  
23   outside with a open door.

24           But here's what else: When Felder fires that shot,  
25   where's he firing from? To the victim's right and lower than

## Scotten-Rebuttal

1 him because he's falling down. And remember what Dr. Prial  
2 told you about how the bullet traveled? Entered on a slight  
3 right side of Mr. Bah's head, it exited on the left behind  
4 his ear, traveling upwards. Now, Tommy Smalls doesn't know  
5 any of that. He just told you an account. And then a  
6 doctor, a medical expert who never met Tommy Smalls came in  
7 here and told you facts that matches that exactly. I'm not  
8 going to spend any more time on that, because, again, you're  
9 actually not going to get a chance to say who shot these two  
10 men. And you certainly know Felder participated, but it is  
11 yet another example of how the evidence corroborates what  
12 Smalls told you.

13 Now, I just want to hit a couple more point before  
14 I sit down. One is reasonable doubt. Mr. Felder's lawyer  
15 said a lot about reasonable doubt. Judge Briccetti and not  
16 Mr. Felder's lawyers will tell you what that means. When you  
17 listen to Judge Briccetti's instructions, I just ask you to  
18 remember this. Reasonable doubt is not some magical or  
19 mystical term. It's the same burden of proof in every  
20 criminal case everywhere in the country for the last 200  
21 years. It's applied every single day and every day juries  
22 return verdicts.

23 Before I sit down, I just want to remind you of  
24 what this case is about. Yes, it's about two terrifying  
25 armed robberies in Yonkers, but most importantly, two

## Scotten-Rebuttal

1 innocent cab drivers executed with a single shot to the back  
2 of the head exactly one week a part, their bodies dumped in  
3 the street, their cabs scrubbed of forensic evidence. So  
4 clear the same crew did both of these, and the defendant  
5 caught on video working with all of them again and again.  
6 All the witnesses, giving you information that builds towards  
7 his role, whether it's because he's a leader, because they  
8 saw him, because he's on videotape, and all the other  
9 evidence in this case consistent with what you heard,  
10 everything showing you that Mr. Felder was part of the crew  
11 that committed these horrible crimes.

12           You know who killed those two men. He is sitting  
13 right there. But you don't even need to decide that. All  
14 you need to know is what the evidence so clearly tells you,  
15 that he was part of the crew that cost Aboubacar Bah and  
16 Maodo Kane their lives. You've known that was true since  
17 last week.

18           Ladies and gentlemen, this may be an easy case in  
19 the sense that there's so much evidence that tells you what  
20 happened, that tells you the defendant is so guilty, but it  
21 is an incredibly important case. Return the only verdict  
22 consistent with the law, the facts, and your good judgment.  
23 The defendant is guilty.

24           Thank you, Your Honor.

25           THE COURT: Thank you, Mr. Scotten.

Sue Ghorayeb, Official Court Reporter

## Judge-Jury Charge

1           Okay. Members of the jury, now that you have heard  
2 all of the evidence and the arguments of the lawyers, it is  
3 my duty to give you final instructions on the law. And all  
4 the instructions I give you - those given at the beginning of  
5 the trial, now at the end of the trial - must guide and  
6 govern your deliberations. It is your sworn duty as jurors  
7 to follow the law as stated in my instructions, and to apply  
8 these rules of law to the facts as you find them from the  
9 evidence received during the trial. The lawyers have  
10 referred to some of the applicable rules of law in their  
11 closing arguments. However, if anything the lawyers said  
12 about the law differs from what I say about the law, what I  
13 say controls. You are to follow my instructions. You are  
14 not to single out any one instruction alone, but you must  
15 consider these instructions as a whole in reaching your  
16 decisions. Also, you are not to be concerned with the wisdom  
17 of any rule of law stated by the Court. Regardless of any  
18 opinion you may have as to what the law ought to be, it would  
19 be a violation of your sworn duty to base any part of your  
20 verdict upon any view or opinion of the law other than that  
21 given in these instructions, just as it would be a violation  
22 of your sworn duty to base your verdict upon anything but the  
23 evidence received in the case.

24           And, again, remember, I'm going to give you copies  
25 of these instructions to take with you into the jury room,

Judge-Jury Charge

1 but very important that you pay close attention, just like  
2 you've been doing throughout the trial, to the instructions  
3 as I give them to you now.

4 As I told you at the beginning of the trial, an  
5 indictment is not evidence. An indictment is the formal  
6 method by which a case is brought into court for trial and  
7 determination by a jury. It creates no presumption that a  
8 crime was committed, and no inference of any kind may be  
9 drawn from the indictment. Under our law, a person who has  
10 been accused of a crime is presumed to be innocent.  
11 Therefore, you may not consider the fact that the Defendant  
12 was indicted as evidence of his guilt.

13 The fact that the prosecution was brought in the  
14 name of the United States entitles the Government to no  
15 greater or lesser consideration than that accorded to any  
16 other party. In your deliberations, you are to perform your  
17 duty without bias or prejudice to either the Government or  
18 the Defendant. All parties, the Government and individuals  
19 alike, stand as equals before this Court.

20 Now, in a criminal case, the burden is on the  
21 Government to prove each and every element of the crime  
22 charged. This burden never shifts to the Defendant. This  
23 means the Defendant has no obligation to prove anything, or  
24 to call or cross-examine any witnesses, or to offer any  
25 evidence. As judges of the facts, you are presuming the

## Judge-Jury Charge

1 Defendant to be innocent, so he has nothing to prove. The  
2 Government must convince you that this presumption of  
3 innocence is wrong before you can find otherwise. And the  
4 Government can only convince you that this presumption is  
5 wrong if it proves beyond a reasonable doubt all of the  
6 elements of the crimes charged in the indictment - nothing  
7 more and nothing less. There is no legal requirement that  
8 the Government prove its case through any particular means.  
9 Your job is to determine whether, on the evidence or lack of  
10 evidence, the Defendant's guilt has been proven beyond a  
11 reasonable doubt. So, the question that naturally arises is  
12 what is a "reasonable doubt"? It is a doubt, based upon  
13 reason and common sense, that would cause a reasonable person  
14 to hesitate to act in a matter of importance in his or her  
15 personal life. Proof beyond reasonable doubt is proof of  
16 such a convincing character that a reasonable person would  
17 not hesitate to rely and act upon it in the most important of  
18 his or her own affairs. A doubt is reasonable if it is based  
19 on the evidence, or the lack of evidence. A doubt is not  
20 reasonable if it is based on caprice, whim, speculation, or  
21 suspicion. A reasonable doubt is not something you dream up  
22 as an excuse to avoid the performance of an unpleasant duty.  
23 And it is not the product of sympathy.

24 Now, you will find the facts from one thing only -  
25 the evidence presented in this courtroom. The evidence in

## Judge-Jury Charge

1 this case consists of the sworn testimony of the witnesses;  
2 all exhibits received in evidence, regardless of who may have  
3 produced them; and all facts that may have been agreed to or  
4 stipulated, which you are to regard as proved. Nothing I say  
5 is evidence. Nothing any of the lawyers say is evidence.  
6 Questions by themselves are not evidence. Objections are not  
7 evidence. You must disregard any testimony to which an  
8 objection was sustained by the Court, and any testimony that  
9 I ordered stricken. Please understand that I am neutral in  
10 this matter. I do not decide the factual issues of this  
11 case. That is not my job; it is yours, and I leave it  
12 entirely to you. My function is to get the trial concluded  
13 as fairly and efficiently as possible, and to explain the law  
14 to you. The decision in the case is yours, so please do not  
15 get any notion that I have a certain view or opinion about  
16 the case. I do not. In making your findings based on the  
17 evidence received, you are permitted to draw reasonable  
18 inferences from the facts that you find have been proved from  
19 the testimony and the exhibits. Inferences are simply  
20 deductions or conclusions that reason and common sense lead  
21 you to draw from the evidence received in the case.

22 You should consider the evidence in a trial in the  
23 same way that any reasonable and careful person would treat  
24 any important question involving facts, opinions, and  
25 evidence. You are expected to use your common sense --

## Judge-Jury Charge

1     excuse me. You are expected to use your good sense in  
2     considering and evaluating the evidence in the case for only  
3     those purposes for which it has been received, and to give  
4     such evidence a reasonable and fair construction in light of  
5     your common knowledge of the natural tendencies and  
6     inclinations of human beings.

7             There are two types of evidence that you may  
8     properly consider in deciding the case. One type of evidence  
9     is called direct evidence. Direct evidence is evidence given  
10    by a witness who testifies to what he or she saw, heard, or  
11    observed, of his or her own knowledge acquired by virtue of  
12    his or her own senses. The other type of evidence is  
13    circumstantial evidence. Circumstantial evidence is evidence  
14    that tends to prove a disputed fact by proof of other facts.  
15    And I'll give you a simple example of circumstantial evidence  
16    that is often used in this courthouse. Let's assume that  
17    when you came into the courthouse today the sun was shining  
18    and it was a nice day. Assume also that the courtroom blinds  
19    were drawn and you could not look outside. And as you sat  
20    here, someone walked in with an umbrella that was wet.  
21    Somebody else walks in with a raincoat that was also wet.  
22    Now, you could not look outside of the courtroom to see  
23    whether or not it was raining, so you would have no direct  
24    evidence of that fact. But, on the combination of facts that  
25    I just asked you to assume, it would be reasonable and



## Judge-Jury Charge

1 logical for you to conclude that it was raining. And that's  
2 all there is to circumstantial evidence. You infer from an  
3 established fact the existence or the nonexistence of some  
4 other fact on the basis of your reason, experience, and  
5 common sense. Circumstantial evidence is of no less value  
6 than direct evidence. The law makes no distinction between  
7 direct and circumstantial evidence, but simply requires that,  
8 before returning a verdict of guilty, the jury must be  
9 satisfied of the Defendant's guilt beyond a reasonable doubt  
10 from all of the evidence in the case.

11 You are the sole judges of the credibility of the  
12 witnesses and the weight their testimony deserves. You may  
13 be guided by the appearance and conduct of the witness, or by  
14 the manner in which the witness testifies, or by the  
15 character of the testimony given, or by evidence you find  
16 credible that is contrary to the testimony given. You should  
17 carefully scrutinize all the testimony you have heard, the  
18 circumstances under which each witness testified, and every  
19 matter in evidence that tends to show whether a witness is  
20 worthy of belief. Consider also each witness's intelligence,  
21 motive, state of mind, and demeanor or manner while on the  
22 stand. In addition, you may consider any evidence of bias,  
23 hostility, or anger a witness might have against either party  
24 in the case. Consider the witness's ability to observe the  
25 matters as to which he or she has testified, and whether he

## Judge-Jury Charge

1 or she impresses you as having an accurate recollection of  
2 these matters. Consider any relation each witness may bear  
3 to either side of the case; the manner in which each witness  
4 might be affected by the verdict; and the extent to which, if  
5 at all, each witness's testimony is supported by or  
6 contradicted by other evidence in the case. Inconsistencies  
7 or discrepancies in the testimony of a witness, or between  
8 the testimonies of different witnesses, may cause you to  
9 discredit someone's testimony, or it may not. Two or more  
10 persons witnessing an event may see or hear it differently;  
11 an innocent mis-recollection, like a failure of recollection,  
12 is not uncommon. In weighing the effect of a discrepancy,  
13 consider whether it pertains to a matter of importance or to  
14 an unimportant detail, and whether you believe it results  
15 from innocent error or intentional falsehood. After making  
16 your judgment, you should give the testimony of each witness  
17 such weight, if any, you think it deserves.

18 Now, you have heard evidence that, before  
19 testifying at this trial, a witness or witnesses made a  
20 statement or statements concerning the same subject matter as  
21 the witness's testimony in the trial. You may consider the  
22 earlier statement or statements to help you decide how much  
23 of that witness's testimony to believe. If you find that the  
24 prior statement was not consistent with the testimony of that  
25 witness at this trial, then you should decide whether that

## Judge-Jury Charge

1 affects the believability of his testimony at the trial. I  
2 also instruct you that a prior statement, if you find that in  
3 fact it was made, is not evidence that the statement is true.  
4 You may consider the prior consistency or inconsistency only  
5 as bearing on the weight or credibility that you wish to give  
6 the testimony that the witness presented in this trial.

7 Now, you have heard from one witness, Tommy Smalls,  
8 who has entered into an agreement to cooperate with the  
9 Government. There is nothing improper about the Government's  
10 use of such a witness. Whether or not you approve of the use  
11 of such a witness in an effort to detect or prosecute  
12 criminal activity is not to enter into your deliberations.  
13 Your sole concern is to decide whether the witness gave  
14 truthful testimony in this courtroom. Although the law  
15 allows the use of such testimony, the nature of such  
16 testimony is such that it must be scrutinized with great care  
17 and viewed with special caution. As always, it is for you to  
18 decide what weight, if any, to give to this witness's  
19 testimony, in light of all the facts and circumstances.  
20 Also, the fact that a witness claims to have been involved in  
21 the charged offense should be considered by you as bearing on  
22 his credibility. However, that does not mean that he is  
23 incapable of giving a truthful version of what happened. You  
24 should also bear in mind that a cooperating witness has an  
25 interest different from that of an ordinary witness. A

## Judge-Jury Charge

1 witness who believes that he may be able to obtain a reduced  
2 sentence or to avoid criminal prosecution by testifying in a  
3 manner favorable to the prosecution may have a motive to  
4 testify falsely. At the same time, you should consider  
5 whether the witness would benefit more by lying or by telling  
6 the truth. If you believe a witness was motivated by  
7 personal gain, was the motivation one that would cause him to  
8 lie, or was it one that would cause him to tell the truth?  
9 And did this motivation color his testimony? Obviously, you  
10 should reject the testimony if you find it was false.  
11 However, if after a cautious and careful examination of the  
12 testimony and the witness's demeanor, you are satisfied that  
13 the testimony is true, you should accept it as credible and  
14 act on it accordingly. As with any witness, you may accept  
15 parts and reject parts of the witness's testimony, or you  
16 may, in your discretion, disregard all of it. In addition,  
17 you heard Mr. Smalls testify that he pleaded guilty in  
18 relation to the same charges against Mr. Felder in this case.  
19 The fact that he pleaded guilty to the same charges in this  
20 case goes only to the guilt of Smalls, and may not be used as  
21 proof that Felder is guilty. You may not infer that the  
22 Defendant is guilty of participating in any criminal conduct  
23 merely from the fact that he associated with other people who  
24 were guilty of wrongdoing. However, as I have said, you may  
25 consider the testimony of Mr. Smalls in determining whether

Judge-Jury Charge

1 or not the Government has proven the charges against the  
2 Defendant beyond a reasonable doubt. In sum, you should look  
3 to all the evidence in deciding what credence and what  
4 weight, if any, you will give to the testimony of Mr. Smalls.

5 Now, you have heard the testimony of a witness who  
6 has testified under a grant of immunity from this Court.  
7 What this means is that the testimony of the witness may not  
8 be used against her in any criminal case, except a  
9 prosecution for perjury, giving a false statement, or  
10 otherwise failing to comply with the immunity order of this  
11 court. You are instructed that the Government is entitled to  
12 call, as a witness, a person who has been granted immunity by  
13 order of this court. You have also heard testimony from law  
14 enforcement witnesses. The fact that a witness is employed  
15 by a government agency as a law enforcement official does not  
16 mean that his or her testimony is necessarily deserving of  
17 more or less consideration or greater or lesser weight than  
18 that of an ordinary witness. It is your decision, after  
19 reviewing all the evidence, whether to accept the testimony  
20 of such witnesses and to give that testimony whatever weight,  
21 if any, you find it deserves.

22 Now, you have heard evidence during the trial that  
23 certain witnesses have discussed the facts of the case and  
24 their testimony with the lawyers before the witnesses  
25 appeared in court. Although you may consider that fact when

## Judge-Jury Charge

1 you are evaluating a witness's credibility, I instruct you  
2 that there is nothing improper about a witness meeting with  
3 lawyers before testifying so that the witness can be aware of  
4 the subjects he or she will be questioned about, focus on  
5 those subjects, and have the opportunity to review relevant  
6 exhibits before being questioned about them here. In fact,  
7 it would be unusual for a lawyer to call a witness without  
8 such a meeting. Again, the weight you give to the fact or  
9 the nature of the witness's preparation for his or her  
10 testimony and what inferences you draw from such preparation  
11 are matters entirely within your discretion.

12 Mr. Felder did not testify in this case. A  
13 defendant has no obligation to testify or present any  
14 evidence, because it is the Government's burden to prove the  
15 defendant's guilt beyond a reasonable doubt. A defendant is  
16 never required to prove that he is innocent. You may not  
17 attach any significance to the fact that Mr. Felder did not  
18 testify. No adverse or unfavorable inference against him may  
19 be drawn by you because he did not take the witness stand.  
20 You may not consider this against him in any way.

21 The Government has presented exhibits in the form  
22 of charts and summaries, which I will characterize as  
23 demonstrative charts. These demonstrative charts were shown  
24 to you in order to make the other evidence more meaningful  
25 and to aid you in considering the evidence. The information

## Judge-Jury Charge

1 on each of these demonstrative charts is based on other  
2 exhibits in evidence and on testimony presented during the  
3 trial. The sources of information for these demonstrative  
4 charts are noted on each chart. The underlying exhibits for  
5 these charts will be provided to you. These demonstrative  
6 charts are not better than the testimony and documents on  
7 which they are based, and are not themselves independent  
8 evidence. Therefore, you are to give no greater  
9 consideration to these demonstrative charts than you would  
10 give to the evidence on which they are based. It is for you  
11 to decide whether the demonstrative charts correctly present  
12 the information contained in the testimony and the exhibits  
13 on which they are based. You are entitled to consider the  
14 demonstrative charts if you find that they help you in  
15 analyzing and understanding the evidence.

16 Now, in this case you have heard evidence in the  
17 form of stipulations of fact. A stipulation of fact is an  
18 agreement between the parties that a certain fact is true.  
19 You must regard such agreed-upon facts as true. You have  
20 also heard evidence in the form of stipulations of testimony.  
21 A stipulation of testimony is an agreement between the  
22 parties that, if called as a witness, a person would have  
23 given certain testimony. You must accept as true the fact  
24 that the witness would have given that testimony. However,  
25 it is for you to determine the effect to be given to that

## Judge-Jury Charge

1 testimony.

2           Okay. Now let me turn to the charges in the  
3 Indictment. Before I describe the specific elements of the  
4 charged offenses, I should draw your attention to the fact  
5 that it does not matter if the indictment charges that a  
6 specific act occurred on or about a certain date, and the  
7 evidence indicates that, in fact, it was on another date.  
8 The law only requires a substantial similarity between the  
9 date alleged in the indictment and the date established by  
10 testimony or exhibits.

11           Now, the Defendant, Tyrone Felder, a/k/a "Man Man,"  
12 is formally charged in an indictment. As I instructed you at  
13 the outset of the case, the indictment is a charge or  
14 accusation. It is not evidence. The indictment in this case  
15 contains nine charges or "counts." Each count charges a  
16 separate offense or crime. Each count must therefore be  
17 considered separately by you, and you must return a separate  
18 verdict on each count. Here is a summary of the nine counts:  
19 Count One charges that on or about August 5, 2014, the  
20 Defendant committed a carjacking, or aided and abetted the  
21 same, of a vehicle driven by Maodo Kane, during the course of  
22 which Mr. Kane was shot and killed. Count Two charges that  
23 the Defendant possessed, carried or used a firearm, or aided  
24 and abetted the same, in connection with the carjacking of  
25 Mr. Kane charged in Count One, which firearm was discharged.



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1 Count Three charges that on or about August 5, 2014, the  
2 Defendant committed a robbery, or aided and abetted the same,  
3 of a convenience store in the vicinity of 821 McLean Avenue  
4 in Yonkers, New York. Count Four charges that the Defendant  
5 possessed, carried or used a firearm, or aided and abetted  
6 the same, in connection with the robbery of a convenience  
7 store charged in Count Three, which firearm was brandished.  
8 Count Five charges that on or about August 5, 2014, the  
9 Defendant committed a robbery, or aided and abetted the same,  
10 of a restaurant in the vicinity of 680 Central Park Avenue in  
11 Yonkers, New York. Count Six charges that the Defendant  
12 possessed, carried or used a firearm, or aided and abetted  
13 the same, in connection with the robbery of a restaurant  
14 charged in Count Five, which firearm was brandished. Count  
15 Seven charges that on or about August 12, 2014, the Defendant  
16 committed a carjacking, or aided and abetted the same, of a  
17 vehicle driven by Aboubacar Bah, during the course of which  
18 Mr. Bah was shot and killed. Count Eight charges that the  
19 Defendant possessed, carried or used a firearm, or aided and  
20 abetted the same, in connection with the carjacking of  
21 Mr. Bah charged in Count Seven, which firearm was discharged.  
22 And Count Nine charges that in or about the summer of 2014,  
23 the Defendant conspired - in other words, agreed - with  
24 others to commit robberies of businesses and individuals in  
25 Westchester County and the Bronx.

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1           And as I just mentioned, the indictment contains  
2 nine counts. Each count constitutes a separate alleged  
3 offense. You must consider each count of the indictment  
4 separately, and you must return a separate, unanimous verdict  
5 as to each count. You may only find the Defendant guilty of  
6 a particular count if the Government has proven each element  
7 of the offense charged with respect to that count beyond a  
8 reasonable doubt. Your verdict as to one count should not  
9 influence your decision as to any other count.

10           Okay. I will start with Counts One and Seven of  
11 the indictment, which each charge the Defendant with  
12 committing the crime of carjacking. Count One reads as  
13 follows - now I'm reading and quoting now from the  
14 indictment: "On or about August 5, 2014, in the Southern  
15 District of New York, Tyrone Felder, a/k/a "Man Man," the  
16 Defendant, with the intent to cause death and serious bodily  
17 harm, knowingly took a motor vehicle that had been  
18 transported, shipped, and received in interstate and foreign  
19 commerce from the person and presence of another by force and  
20 violence and by intimidation, and did aid and abet the same,  
21 and death resulted, to wit in the course of the carjacking by  
22 the Defendant, the driver of the car, Maodo Kane, was shot  
23 and killed." Count Seven reads as follows: "On or about  
24 August 12, 2014, in the Southern District of New York, Tyrone  
25 Felder, a/k/a "Man Man," - a/k/a means also known as - but

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1 a/k/a "Man Man," the Defendant, with the intent to cause  
2 death and serious bodily harm, knowingly took a motor vehicle  
3 that had been transported, shipped, and received in  
4 interstate and foreign commerce from the person and presence  
5 of another by force and violence and by intimidation, and did  
6 aid and abet the same, and death resulted, to wit in the  
7 course of the carjacking by the Defendant, the driver of the  
8 car, Aboubacar Bah, was shot and killed." Now, the elements  
9 are the same for both Count One and Count Seven. And here  
10 they are. To find the Defendant guilty, the Government must  
11 prove each of the following elements beyond a reasonable  
12 doubt: First, the Defendant took a motor vehicle from the  
13 person or presence of another, or aided and abetted the same;  
14 Second, the Defendant took the vehicle by using force and  
15 violence or by acting in an intimidating manner, or aided and  
16 abetted the same; Third, the Defendant acted with intent to  
17 cause death or serious bodily harm, or aided and abetted the  
18 same; and Fourth, the motor vehicle had previously been  
19 transported, shipped, or received in interstate or foreign  
20 commerce. And I will now explain these four elements to you  
21 in greater detail.

22 First Element: The first element the Government  
23 must establish beyond a reasonable doubt is that the  
24 Defendant took a motor vehicle from the person or presence of  
25 another, or aided and abetted the same. To take a motor

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1 vehicle means to acquire possession or control of the vehicle  
2 for a period of time. The Government does not have to prove  
3 that the Defendant, or those he is alleged to have aided and  
4 abetted, intended to permanently deprive the owner of  
5 possession of the vehicle. Also, the Government does not  
6 have to prove that the victim was forced to leave the vehicle  
7 as long as it proves that the Defendant, or those he is  
8 alleged to have aided and abetted, had control of the  
9 situation.

10 Second Element: The second element the Government  
11 must prove beyond a reasonable doubt is that the Defendant  
12 took the vehicle from the victim by using force and violence  
13 or by acting in an intimidating manner, or aided and abetted  
14 the same. The Government can meet its burden on this element  
15 either by proving that the Defendant, or those he is alleged  
16 to have aided and abetted, used force and violence or that  
17 the Defendant acted in an intimidating manner. The Government  
18 does not have to prove that the Defendant, or those he is  
19 alleged to have aided and abetted, used force and violence if  
20 it proves that the Defendant, or those he is alleged to have  
21 aided and abetted, acted in an intimidating manner. The  
22 phrase "intimidating manner" means that the Defendant did or  
23 said something that would make an ordinary reasonable person  
24 fear bodily harm. Your focus should be on the Defendant's  
25 behavior. The Government does not have to prove that the

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1 behavior of the Defendant or those he is alleged to have  
2 aided and abetted caused or could have caused great terror or  
3 panic, but it must show that an ordinary person would have  
4 feared bodily harm because of the behavior. The Government  
5 also does not have to prove that the Defendant, or those he  
6 is alleged to have aided and abetted, made explicit threats  
7 of bodily harm. If you find the Defendant, or those he is  
8 alleged to have aided and abetted, confronted the victim in  
9 such a way that it would reasonably create a fear of bodily  
10 harm, that is sufficient.

11 Third Element: The third element the Government  
12 must prove beyond a reasonable doubt is that the Defendant  
13 acted with intent to cause death or serious bodily harm. To  
14 establish this element, the Government must prove that at the  
15 moment the Defendant, or those he is alleged to have aided  
16 and abetted, demanded or took control of the vehicle, the  
17 Defendant possessed the intent to seriously harm or kill the  
18 driver if necessary to steal the car or for any other reason.  
19 A Defendant may intend to engage in certain conduct only if a  
20 certain event occurs. In this case, the Government contends  
21 that the Defendant intended to cause death or serious bodily  
22 harm if the victim refused to turn over his car. If you find  
23 beyond a reasonable doubt that the Defendant had such an  
24 intent, the Government has satisfied this element of the  
25 offense.

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1           Fourth Element: The fourth element the Government  
2 must prove beyond a reasonable doubt is that the motor  
3 vehicle had previously been transported, shipped, or received  
4 in interstate or foreign commerce. And this requires the  
5 Government to prove that at some point in the past -- some  
6 time in the past the vehicle had been shipped, driven or  
7 transported between one state and another. It is not  
8 necessary that the Government prove that the Defendant had  
9 any involvement in the interstate shipping, driving or  
10 transportation, or that the Defendant knew that the vehicle  
11 had previously been shipped, driven or transported in  
12 interstate commerce. In this case, you have heard a  
13 stipulation between the parties that if called as a witness,  
14 a representative of the Ford Motor Company would testify that  
15 the vehicle driven by Mr. Kane on August 5, 2014, was  
16 manufactured in Michigan. You have also heard a stipulation  
17 that if called as a witness, a representative of Toyota would  
18 testify that the vehicle driven by Mr. Bah on August 12,  
19 2014, was manufactured in Kentucky.

20           Now, if, and only if, you find the Defendant guilty  
21 of Counts One or Seven as I just explained to you, then you  
22 must make a special finding on each of those Counts, Counts  
23 One and Seven, for which you found the Defendant guilty.  
24 Specifically, you must determine whether or not death  
25 resulted from the actions of the Defendant, or the actions of

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1 people the Defendant is alleged to have aided and abetted.  
2 In order to establish that the conduct of the Defendant, or  
3 those he is alleged to have aided and abetted, resulted in  
4 the death of the victim, the Government must prove beyond a  
5 reasonable doubt that but for the actions of the Defendant,  
6 or those he is alleged to have aided and abetted, the victim  
7 would not have died. The Government is not required to prove  
8 that the Defendant, or those he is alleged to have aided and  
9 abetted, intended to cause the death of the victim. Your  
10 finding that death resulted must be beyond a reasonable  
11 doubt. In addition, it must be unanimous, in that all of you  
12 must agree that death resulted. You will be provided with a  
13 verdict form that will include a space for you to indicate  
14 your determination with respect to this issue on those two  
15 Counts, and I'll discuss that with you at the end of my  
16 instructions.

17 Okay. Moving on to Counts Three and Five, which  
18 are the robbery counts. Count Three reads as follows: "On  
19 or about August 5, 2014, in the Southern District of New  
20 York, Tyrone Felder, a/k/a "Man Man," the Defendant,  
21 unlawfully and knowingly did commit robbery, as that term is  
22 defined in Title 18, United States Code, Section 1951(b)(1),  
23 and did thereby obstruct, delay, and affect commerce and the  
24 movement of articles and commodities in commerce, as that  
25 term is defined in Title 18, United States Code, Section

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1 1951(b) (3), and did aid and abet the same, to wit, Felder  
2 robbed a convenience store in the vicinity of 821 McLean  
3 Avenue in Yonkers, New York, that sold goods which had  
4 traveled in interstate commerce." Count Five reads as  
5 follows: "On or about August 5, 2014, in the Southern  
6 District of New York, Tyrone Felder, a/k/a "Man Man," the  
7 Defendant, unlawfully and knowingly did commit robbery, as  
8 that term is defined in Title 18, United States Code, Section  
9 1951(b) (1), and did thereby obstruct, delay, and affect  
10 commerce and the movement of articles and commodities in  
11 commerce, as that term is defined in Title 18, United States  
12 Code, Section 1951(b) (3), and did aid and abet the same, to  
13 wit, Felder robbed a restaurant in the vicinity of  
14 680 Central Park Avenue in Yonkers, New York, that sold goods  
15 which had traveled in interstate commerce." The elements are  
16 the same for both Count Three and Count Five. To find the  
17 Defendant guilty, the Government must prove each of the  
18 following elements beyond a reasonable doubt: First, the  
19 Defendant obtained or took the personal property of another,  
20 or from the presence of another, or attempted to do so, or  
21 aided and abetted the same; Second, the Defendant did so  
22 against the intended victim's will by actual or threatened  
23 force, violence or fear of injury, whether immediate or in  
24 the future, or aided and abetted the same; Third, the  
25 Defendant's actions in any way or degree obstructed, delayed,



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1 or affected interstate commerce; and Fourth, the Defendant  
2 acted knowingly and unlawfully. And I will now explain these  
3 four elements to you in greater detail.

4 First Element: The first element the Government  
5 must prove beyond a reasonable doubt is that the Defendant  
6 knowingly obtained the personal property of another or from  
7 the presence of another, or aided and abetted the same. The  
8 term "property" includes tangible and intangible things of  
9 value. Money is considered "property."

10 Second Element: The second element the Government  
11 must prove beyond a reasonable doubt is that the Defendant  
12 took the personal property of another against the victim's  
13 will, by actual or threatened force, violence, or fear of  
14 injury, whether immediate or in the future, or aided and  
15 abetted the same. It is not necessary that the force,  
16 violence, and fear were all used or threatened. It is  
17 sufficient that any of these methods was employed. In  
18 considering whether the Defendant, or those he was allegedly  
19 aiding and abetting, used, or threatened to use, force,  
20 violence, or fear, you should give those words their common  
21 and ordinary meaning, and understand them as you normally  
22 would. The violence does not have to be directed at the  
23 person whose property was taken. The use of a threat of  
24 force or violence might be aimed at a third person. A threat  
25 may be made verbally or by a physical gesture. Whether a

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1 statement or physical gesture by the Defendant actually was a  
2 threat depends upon the surrounding facts.

3 Third Element: The third element that the  
4 Government must prove beyond a reasonable doubt is that the  
5 robbery affected interstate or foreign commerce. The  
6 requirement of showing an effect on commerce involves only a  
7 minimal burden of proving a connection to interstate  
8 commerce, and is satisfied by conduct that affects commerce  
9 in any way or degree. The requirement may be satisfied by a  
10 showing of a very slight effect on interstate commerce. Even  
11 a potential or subtle effect on commerce will suffice. The  
12 requirement may be satisfied by a showing that the target of  
13 the robbery or attempted robbery was a business engaged in  
14 interstate commerce. With regard to this element, it is not  
15 necessary for the Government to prove that commerce actually  
16 was affected by the Defendant's conduct. It is sufficient if  
17 the charged robbery or attempted robbery possibly or  
18 potentially would have affected interstate or foreign  
19 commerce. It is not necessary for you to find that the  
20 Defendant intended or anticipated that the effect of his acts  
21 would be to affect interstate commerce, or that the Defendant  
22 had a purpose to affect commerce. All that is necessary is  
23 that the natural effect of the acts he committed would affect  
24 interstate or foreign commerce. Now, in this case, you have  
25 heard a stipulation between the parties that the convenience

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1 store located in the vicinity of 821 McLean Avenue in  
2 Yonkers, New York, alleged to have been the target of the  
3 robbery in Count Three, and the restaurant located in the  
4 vicinity of 680 Central Park Avenue in Yonkers, New York,  
5 alleged to have been the target of the robbery charged in  
6 Count Five, were businesses engaged in interstate commerce.  
7 Again, you should accept a stipulated fact as true.  
8 Accordingly, with respect to Counts Three and Five, this  
9 element has been satisfied, and there is nothing else for you  
10 to consider with respect to this element for those Counts.

11 Fourth Element: The fourth element the Government  
12 must prove beyond a reasonable doubt is that the Defendant  
13 acted unlawfully and knowingly, that is, with a conscious  
14 purpose to violate the law. The terms "unlawfully" and  
15 "knowingly" are used because, if you find that the Defendant  
16 committed the robbery, or aided and abetted the same, you  
17 must also consider whether the prosecution has proven beyond  
18 a reasonable doubt that, in doing so, the Defendant knew what  
19 he was doing. In other words, the Defendant -- strike that.  
20 In other words, the Government must prove beyond a reasonable  
21 doubt that the Defendant committed a robbery deliberately and  
22 voluntarily. "Unlawfully" means obviously contrary to law,  
23 but in terms of its application to the Defendant's state of  
24 mind, the Government is not required to show that the  
25 Defendant knew he was breaking any particular law. The

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1 Government must prove, however, that the Defendant was aware  
2 of the generally unlawful nature of his acts. And  
3 "knowingly" means to act consciously and voluntarily rather  
4 than by mistake, or accident or mere inadvertence.

5 Now, let me talk to you about aiding and abetting,  
6 which you've heard me mention several times. With respect to  
7 Counts One, Three, Five, and Seven, the indictment also  
8 charges the Defendant with what is called "aiding and  
9 abetting." Aiding and abetting liability is its own theory  
10 of criminal liability. In effect, it is a theory of  
11 liability that permits a Defendant to be convicted of a  
12 specified crime if the Defendant, while not himself  
13 committing the crime, assisted another person or persons in  
14 committing the crime. Under the aiding and abetting statute,  
15 it is not necessary for the Government to show that the  
16 Defendant himself physically committed the crime with which  
17 he is charged in order for you to find the Defendant guilty.  
18 You may find the Defendant guilty of the substantive crime if  
19 you find beyond a reasonable doubt that the Government has  
20 proved that another person physically committed the crime,  
21 and that the Defendant aided and abetted that person in the  
22 commission of the crime. As you can see, the first  
23 requirement is that another person has committed the crime  
24 charged. Obviously, no one can be convicted of aiding and  
25 abetting the criminal acts of another if no other crime was

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1 committed by the other person -- or no crime was committed by  
2 the other person in the first place. But if you do find that  
3 a crime was committed, then you must consider whether the  
4 Defendant aided or abetted the commission of the crime. To  
5 aid or abet another to commit a crime, it is necessary that  
6 the Defendant willfully and knowingly associate himself in  
7 some way with the crime, and that he willfully and knowingly  
8 participate in the crime by doing some act to help make the  
9 crime succeed. To establish that the Defendant participated  
10 in the commission of the crime, the Government must prove  
11 that the Defendant engaged in some affirmative conduct or  
12 overt act for the specific purpose of bringing about that  
13 crime. So, the mere presence of a Defendant where a crime is  
14 being committed, even coupled with knowledge by the Defendant  
15 that a crime is being committed, or merely associating with  
16 others who were committing a crime is not sufficient to  
17 establish aiding and abetting. One who has no knowledge that  
18 a crime is being committed or is about to be committed but  
19 inadvertently does something that aids the commission of the  
20 crime is not an aider and abettor. An aider and abettor must  
21 know that the crime is being committed and act in a way which  
22 is intended to bring about the success of the criminal  
23 venture. To determine whether a Defendant aided or abetted  
24 the commission of the crime with which he is charged, ask  
25 yourself these questions:

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1 Did he participate in the crime charged as  
2 something he wished to bring about?

3 Did he associate himself with the criminal venture  
4 knowingly and willfully?

5 Did he seek by his actions to make the criminal  
6 venture succeed?

7 If he did, then the Defendant is an aider and  
8 abettor, and therefore guilty of the offense. If he did not,  
9 then the Defendant is not an aider and abettor, and is not  
10 guilty of aiding and abetting that offense.

11 Here's what I want to do right now. I want to take  
12 a one-minute break, just for everybody to stretch. Stand up  
13 and stretch. I know that this is long, and you've paid  
14 attention, and that's terrific, but let's just stretch. By  
15 the way, that applies to me too.

16 All right. Have a seat.

17 Okay. I will now turn to the firearms offenses  
18 charged in Counts Two, Four, Six, and Eight of the  
19 indictment. These counts charge a violation of the law  
20 making it a crime for any person, "during and in relation to  
21 any crime of violence... [to] use[] or carr[y] a firearm,"  
22 or, "in furtherance of any such crime, [to] possess[] a  
23 firearm." Count Two reads as follows: "On or about  
24 August 5, 2014, in the Southern District of New York, Tyrone  
25 Felder, a/k/a "Man Man," the Defendant, during and in

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1 relation to a crime of violence for which he may be  
2 prosecuted in a court of the United States, namely, the  
3 carjacking charged in Count One of this indictment, knowingly  
4 did use and carry a firearm, and, in furtherance of such  
5 crime, did possess a firearm, which was discharged, and did  
6 aid and abet the same." Count Two is a firearms count  
7 connected to the carjacking offense charged in Count One.  
8 What this means is that you cannot consider Count Two unless  
9 you first determine that the Defendant is guilty of the  
10 carjacking charged in Count One. Now, Count Four reads as  
11 follows: "On or about August 5, 2014, in the Southern  
12 District of New York, Tyrone Felder, a/k/a "Man Man," the  
13 Defendant, during and in relation to a crime of violence for  
14 which he may be prosecuted in a court of the United States,  
15 namely, the robbery charged in Count Three of this  
16 indictment, knowingly did use and carry a firearm, and, in  
17 furtherance of such crime, did possess a firearm, which was  
18 brandished, and did aid and abet the same." Count Four is a  
19 firearms count connected to the robbery offense charged in  
20 Count Three. This means that you cannot consider Count Four  
21 unless you determine that the Defendant is guilty of the  
22 robbery charged in Count Three. Count Six reads as follows:  
23 "On or about August 5, 2014, in the Southern District of New  
24 York, Tyrone Felder, a/k/a "Man Man," the Defendant, during  
25 and in relation to a crime of violence for which he may be

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1 prosecuted in a court of the United States, namely, the  
2 robbery charged in Count Five of the indictment, knowingly  
3 did use and carry a firearm, and, in furtherance of such  
4 crime, did possess a firearm, which was brandished, and did  
5 aid and abet the same." Count Six is a firearms count  
6 connected to the robbery offense charged in Count Five. This  
7 means that you cannot consider Count Six unless you determine  
8 the Defendant is guilty of the robbery charged in Count Five.  
9 Count Eight reads as follows: "On or about August 12, 2014,  
10 in the Southern District of New York, Tyrone Felder, a/k/a  
11 "Man Man," the Defendant, during and in relation to a crime  
12 of violence for which he may be prosecuted in a court of the  
13 United States, namely, the carjacking charged in Count Seven  
14 of this indictment, knowingly did use and carry a firearm,  
15 and, in furtherance of such crime, did possess a firearm,  
16 which was discharged, and did aid and abet the same." Count  
17 Eight is a firearms offense connected to the carjacking  
18 offense charged in Count Seven. So, again, this means that  
19 you cannot consider Count Eight unless you first determine  
20 the Defendant is guilty of the carjacking charged in Count  
21 Seven. And the elements for these four counts are the same,  
22 Counts Two, Four, Six, and Eight, as follows.

23 To find the Defendant guilty of the firearms  
24 offenses charged in Counts Two, Four, Six, and Eight, the  
25 Government must prove each of the following elements beyond a



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1 reasonable doubt:

2 First, on or about the dates alleged in the  
3 indictment, the Defendant used or carried or possessed a  
4 firearm, or any combination of those acts, or aided and  
5 abetted the same -- or strike that. Or aided and abetted the  
6 use, carrying or possession of a firearm by another. Second,  
7 the Defendant used or carried the firearm, or aided and  
8 abetted the use and carrying of the firearm, during and in  
9 relation to the specified crimes of violence, or that the  
10 Defendant possessed the firearm, or aided and abetted the  
11 possession of the firearm, in furtherance of the specified  
12 crimes of violence. And, third, the Defendant acted  
13 unlawfully and knowingly.

14 First Element: The first element that the  
15 Government must prove beyond a reasonable doubt is that on or  
16 about the dates set forth in the indictment, the Defendant  
17 used, carried, or possessed a firearm, or aided and abetted  
18 the same.

19 A firearm under the statute means "any weapon...  
20 which will or is designed to or may readily be converted to  
21 expel a projectile by the action of an explosive." In  
22 considering the specific element of whether the Defendant you  
23 are considering used or carried or possessed a firearm, it  
24 does not matter whether the firearm was loaded or operable at  
25 the time of the crime. Operability is not relevant to your

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1 determination of whether a weapon qualifies as a firearm. And  
2 I instruct you that a gun is a firearm.

3 "Use:" In order to prove that the Defendant used  
4 the firearm, the Government must prove beyond a reasonable  
5 doubt that an active employment of the firearm by the  
6 Defendant during and in relation to the commission of a crime  
7 of violence. Let me read that again. In order to prove that  
8 the Defendant used the firearm, the Government must prove  
9 beyond a reasonable doubt an active employment of the firearm  
10 by the Defendant during and in relation to the commission of a  
11 crime of violence. This does not mean that the Defendant must  
12 actually fire or attempt to fire the weapon, although those  
13 would obviously constitute use of the weapon. Brandishing,  
14 displaying, or even referring to the weapon so that others  
15 present knew that the Defendant had the firearm available if  
16 needed all constitute use of the firearm. The mere possession  
17 of a firearm at or near the site of the crime without active  
18 employment as I just described it is not, however, sufficient  
19 to constitute use of the firearm.

20 "Carry:" In order to prove that the Defendant  
21 carried the firearm, the Government must prove beyond a  
22 reasonable doubt that the Defendant had the weapon within his  
23 control so that it was available in such a way that it  
24 furthered the commission of the crime. The Defendant need not  
25 have held the firearm physically, that is have had actual

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1 possession of it on his person. If you find that the  
2 Defendant had dominion and control over the place where the  
3 firearm was located, and had the power and intention to  
4 exercise control over the firearm, and that the firearm was  
5 immediately available to him in such a way that it furthered  
6 the commission of the crime of violence, you may find that the  
7 Government has proven that the Defendant carried the weapon.

8 "Possess:" The legal concept of possession may  
9 differ from everyday use of the term, so let me explain that  
10 to you in some detail. Actual possession is what most of us  
11 think of as possession - that is, having physical custody or  
12 control of an object, as I possess this pen. If you find the  
13 Defendant had the firearm on his person, therefore, you may  
14 find the Defendant had possession of it. However, a person  
15 need not have actual, physical possession - that is, physical  
16 custody of an object - in order to be in legal possession of  
17 it. If a person has the ability to exercise substantial  
18 control over an object, even if he does not have the object in  
19 his physical custody, and that person has the intent to  
20 exercise control, then the person is in possession of that  
21 article. This is called "constructive possession." Control  
22 over an object may be demonstrated by the existence of a  
23 working relationship between one person having the power or  
24 ability to control the item and another person who has actual  
25 physical custody. The person having control "possesses" the

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1 firearm, because he has an effective working relationship with  
2 the person who has actual physical custody of the firearm, and  
3 because he can direct the movement or transfer or disposition  
4 of the firearm. In addition, an individual may have  
5 possession of an item that is not found on his person, because  
6 that individual has a relationship to the location where the  
7 item is maintained. In this manner, for example, a  
8 businessperson may possess things that are scattered  
9 throughout a number of stores or offices or installations  
10 around the country. More than one person can have control  
11 over the same firearm. The law recognizes that possession may  
12 be sole or joint. If one person alone has actual or  
13 constructive possession of a thing, possession is sole. If  
14 more than one person has possession of it, as I have defined  
15 possession for you, then possession is joint. That is what is  
16 meant by "possession." If you find that the Defendant had  
17 such power and intention, then he possessed the firearm under  
18 this element even if he possessed it jointly with another.  
19 Proof of ownership of the firearm is not required. Finally,  
20 possession and ownership are not the same. A person can  
21 possess an object and not be the owner of the object.

22 Now, the Defendant is also charged with aiding and  
23 abetting the crimes charged in Counts Two, Four, Six, and  
24 Eight, the firearms offenses. I previously instructed you on  
25 aiding and abetting law, and you should apply those

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1 instructions in determining whether the Defendant is guilty of  
2 these Counts as an aider and abettor. I also want to give you  
3 an additional instruction that applies specifically to these  
4 Counts, the firearms counts. To convict the Defendant of  
5 aiding and abetting the crime charged in these Counts, you  
6 must find that the Defendant either facilitated the use,  
7 carrying, or possession of the firearm or the commission of  
8 the charged crimes of violence. It is not necessary that the  
9 Defendant facilitate both the possession, use, or carrying of  
10 the firearm and the crimes of violence. To convict the  
11 Defendant of a firearms offense on an aiding and abetting  
12 theory, you must find that the Defendant had the advance  
13 knowledge that a participant in the crime of violence would  
14 use, carry, or possess a firearm in furtherance of the crime  
15 of violence. Advance knowledge means knowledge at a time the  
16 Defendant can attempt to alter the plan or withdraw from it.  
17 Knowledge of the gun may, but does not have to, exist before  
18 the underlying crime has begun. It is sufficient if the  
19 knowledge is gained in the middle of the underlying crime, so  
20 long as the Defendant continues to participate in the crime  
21 and has a realistic opportunity to withdraw from it. You may,  
22 but need not, infer that the Defendant has sufficient  
23 foreknowledge if you find that the Defendant continued his  
24 participation in the crime after learning about the use,  
25 carrying, or possession of a gun by a co-participant in the

### Judge-Jury Charge

1 crime of violence. In other words, as to aiding and abetting  
2 the offenses charged in Counts Two, Four, Six, and Eight, the  
3 Government must prove beyond a reasonable doubt that the  
4 Defendant either facilitated the use, carrying, or possession  
5 of the firearm or the commission of the charged crime of  
6 violence, and had knowledge of the firearm when he still had a  
7 realistic opportunity to withdraw from the crime of violence.  
8 That's all the first element.

9 Moving on to the second element. The second element  
10 of the firearms offenses is that the Defendant used or carried  
11 a firearm during and in relation to a crime of violence, or,  
12 in the alternative, that he possessed a firearm in furtherance  
13 of such a crime. "In relation to" means that the firearm must  
14 have had some purpose, role, or effect with respect to the  
15 crime of violence. This requirement is satisfied if the  
16 firearm facilitated, or had the potential to facilitate, the  
17 specified crimes of violence. To possess a firearm "in  
18 furtherance of a crime of violence" requires that the  
19 Defendant possessed a firearm and that the possession advanced  
20 or moved forward the crime. The mere presence of a firearm is  
21 not enough. The firearm must have played some part in  
22 furthering the crime in order for this element to be  
23 satisfied. Now, you are instructed that the carjackings  
24 charged in Counts One and Seven of the indictment and the  
25 robberies charged in Counts Three and Five all qualify under

### Judge-Jury Charge

1 the law as crimes of violence.

2 Third Element: The third element the Government  
3 must prove beyond a reasonable doubt is that the Defendant  
4 knew that he was carrying or using a firearm during and in  
5 relation to a crime of violence, or knew that he was  
6 possessing a firearm in furtherance of such a crime, and that  
7 the Defendant acted unlawfully and knowingly in doing so. And  
8 I have already defined for you "unlawfully" and "knowingly."

9 Okay. Now, as to Counts Four and Six, if, and only  
10 if -- which relate to Counts Three and Five. If, and only if,  
11 you find the Defendant guilty of Counts Four or Six as I've  
12 just explained it to you, then you must make a special finding  
13 on each Count for which you found the Defendant guilty.  
14 Specifically, you must determine whether or not, during the  
15 Defendant's use, carrying, or possession of a firearm, he  
16 brandished the firearm, or aided and abetted another's  
17 brandish of the firearm. To "brandish" a firearm means to  
18 display all or part of the firearm, or otherwise make the  
19 presence of the firearm known to another person, in order to  
20 intimidate that person, regardless of whether the firearm is  
21 directly visible to that person. Your finding as to brandish  
22 must be beyond a reasonable doubt. In addition, it must be  
23 unanimous, in that all of you must agree that a firearm was  
24 brandished. And, again, as I told you earlier, you are going  
25 to be provided with a verdict form that will include a space

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1 for you to indicate your determination with respect to this  
2 issue.

3 Now, Counts Two and Eight, which relate,  
4 respectively, to Counts One and Seven. If, and only if, you  
5 find the Defendant guilty of Counts Two or Eight as I just  
6 explained to you, then you must make a special finding on each  
7 of those Counts for which you found the Defendant guilty.  
8 Specifically, you must determine whether or not, during the  
9 Defendant's use, carrying, or possession of a firearm, or his  
10 aiding and abetting of the use, carrying, or possession of a  
11 firearm, the firearm was discharged. "Discharge" means to  
12 fire or shoot. The Defendant need not be the person who  
13 personally discharged the firearm and, indeed, the discharge  
14 may even be accidental. Your finding that a discharge  
15 occurred must be beyond a reasonable doubt. In addition, it  
16 must be unanimous, in that all of you must agree that a  
17 firearm was discharged. Beyond a reasonable doubt and  
18 unanimous. That's required, as it is with respect to every  
19 other aspect of your verdict. You will be provided with a  
20 verdict form that will include a space for you to indicate  
21 your determination with respect to this issue.

22 Okay. Moving on to Count Nine, which is the robbery  
23 conspiracy count. And Count Nine of the indictment charges  
24 the Defendant with participating in a robbery conspiracy. A  
25 conspiracy is a kind of criminal partnership - an agreement,



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1 or an understanding, of two or more persons to join together  
2 to accomplish some unlawful purpose. The crime of conspiracy  
3 to violate a federal law is an independent offense. It is  
4 separate and distinct from the actual violation of any  
5 specific federal law or laws, which the law refers to as  
6 "substantive crimes." Indeed, you may find a Defendant guilty  
7 of the crime of conspiracy to commit an offense against the  
8 United States even though the substantive crime, which was the  
9 object of the conspiracy, was not actually committed. Count  
10 Nine reads as follows: "In or about Summer 2014, in the  
11 Southern District of New York and elsewhere, Tyrone Felder,  
12 a/k/a "Man Man," the Defendant, and others known and unknown,  
13 willfully and knowingly did combine, conspire, confederate,  
14 and agree together and with each other to commit robbery, as  
15 that term is defined in Title 18, United States Code,  
16 Section 1951(b)(1), and would and did thereby obstruct, delay,  
17 and affect commerce and the movement of articles and  
18 commodities in commerce, as that term is defined in Title 18,  
19 United States Code, Section 1951(b)(3), to wit, Felder, and  
20 others known and unknown, agreed to rob businesses and  
21 individuals in Westchester County and Bronx County that  
22 transacted business in interstate commerce." I'm continuing  
23 to quote from the Indictment here. "In furtherance of the  
24 conspiracy and to effect the illegal object thereof, the  
25 following overt acts, among others, were committed in the

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1 Southern District of New York: a. On or about August 5,  
2 2014, Tyrone Felder, a/k/a "Man Man," the Defendant, robbed  
3 and carjacked a livery cab driver in the Bronx, New York.  
4 b. On or about August 5, 2014, Tyrone Felder, a/k/a "Man  
5 Man," the Defendant, robbed employees of a convenience store  
6 in Yonkers, New York. c. On or about August 5, 2014, Tyrone  
7 Felder, a/k/a "Man Man," the Defendant, robbed employees of a  
8 restaurant in Yonkers, New York. d. On or about August 12,  
9 2014, Tyrone Felder, a/k/a "Man Man," the Defendant, robbed  
10 and carjacked a livery cab driver in the Bronx, New York."

11 Now, to sustain its burden of proof with respect to  
12 the conspiracy charge, the Government must establish the  
13 following elements: First -- and there are two elements.  
14 First, the Government must prove that the conspiracy charged  
15 in the indictment existed. That is, that there was an  
16 agreement or understanding among at least two people to  
17 violate the laws of the United States that make it a crime to  
18 commit a robbery that affects interstate or foreign commerce.  
19 Then, second, the Government must prove that the Defendant  
20 knowingly became a member of the conspiracy to commit robbery.  
21 Again, both of these elements must be satisfied beyond a  
22 reasonable doubt.

23 First Element: Starting with the first element, a  
24 conspiracy is an agreement or understanding, explicit or  
25 implicit, of two or more people to accomplish a criminal or

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1 unlawful purpose. In this instance, the unlawful purpose  
2 alleged to have been the object of the conspiracy was the  
3 robberies of businesses and individuals in Westchester County  
4 and the Bronx. In other words, the Government alleges that  
5 there was an agreement or understanding and that its objective  
6 was to commit robberies which affected interstate or foreign  
7 commerce. As for the time frame of the alleged conspiracy,  
8 although it is charged that the conspiracy took place in or  
9 about the summer of 2014, it is not essential that the  
10 Government prove that the conspiracy started and ended on  
11 specific dates or that it existed throughout that period.  
12 Rather, it is sufficient to satisfy the first element, that  
13 you find that in fact a conspiracy was formed, and that it  
14 existed for any time within the charged period.

15           Second Element: If you conclude that the Government  
16 has proven beyond a reasonable doubt that the charged  
17 conspiracy existed, you must then consider the second  
18 essential element, which is that the Defendant was a member of  
19 the conspiracy. To prove this second element, the Government  
20 must prove beyond a reasonable doubt that the Defendant  
21 participated in the charged conspiracy and that he did so  
22 unlawfully, intentionally and knowingly. I have already  
23 defined the terms "unlawfully" and "knowingly." You should  
24 apply the definitions that I have already given to you.  
25 "Intentionally" means to act deliberately and with a bad

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1 purpose rather than innocently. If you find beyond a  
2 reasonable doubt that the Defendant participated in the  
3 charged conspiracy and did so unlawfully, intentionally, and  
4 knowingly, then the second element is satisfied. In this  
5 regard, it is not necessary that the Defendant be fully  
6 informed of all the details of the conspiracy in order to  
7 justify an inference of membership on his part. Nor does the  
8 Defendant need to know the full extent of the conspiracy or  
9 all of its participants. Indeed, it is not necessary that the  
10 Defendant know more than one other member of the conspiracy.  
11 Nor is it necessary that the Defendant receive any monetary  
12 benefit from participating in the conspiracy. All that is  
13 necessary is proof beyond a reasonable doubt that the  
14 Defendant intentionally joined in the conspiracy for the  
15 purpose of furthering its unlawful objective. The Defendant  
16 also need not have joined the conspiracy at the outset. The  
17 Defendant may have joined it at any time in its progress, and  
18 he will still be held responsible for all that was done before  
19 he joined, as well as all that was done during the  
20 conspiracy's existence while the Defendant was a member. The  
21 law does not require that each conspirator have an equal role  
22 in the conspiracy. Even a single act may be sufficient to  
23 draw the Defendant within the ambit of a conspiracy if it  
24 meets the essential requirements I have just described.  
25 However, I want to caution you that the mere association by

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1 the Defendant with a conspirator does not make the Defendant a  
2 member of the conspiracy even when coupled with knowledge that  
3 a conspiracy is taking place. In other words, knowledge  
4 without participation is not sufficient. What is necessary is  
5 that the Defendant has participated in the conspiracy with  
6 knowledge of its unlawful purpose and with intent to aid in  
7 the accomplishment of its unlawful objective. In short, to  
8 satisfy the second essential element of the charged  
9 conspiracy, you must find beyond a reasonable doubt that the  
10 Defendant, with an understanding of the unlawful character of  
11 the conspiracy charged in Count Nine, intentionally joined the  
12 conspiracy for the purpose of furthering the unlawful object  
13 of committing robbery. I have previously instructed you on  
14 the law concerning robbery, and you should apply those same  
15 instructions here to the object of the unlawful conspiracy  
16 charged in Count Nine.

17 Now, let me just say something about what we call  
18 venue. In addition to all of the elements of the charged  
19 crime that I have described for you, you must decide whether  
20 any act in furtherance -- when I say -- I'm sorry. Let me  
21 start over. In addition to all the elements of the charged  
22 crimes that I have just described for you, you must decide  
23 whether any act in furtherance of the charged crime you are  
24 considering occurred within the Southern District of New York.  
25 The Southern District of New York encompasses the following

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1 counties: New York County (which is Manhattan), the Bronx,  
2 Westchester, Sullivan, Orange, Rockland, Putnam, and Dutchess.  
3 Thus, you must decide whether the crime charged, and this  
4 applies to each of the crimes charged - or any act committed  
5 to further or promote the crime - occurred within the Southern  
6 District of New York. For the venue requirement only, the  
7 Government need not prove venue beyond a reasonable doubt.  
8 Instead, the Government need only prove venue by a  
9 preponderance of the evidence. "Preponderance of the  
10 evidence" means more likely than not. Thus, the Government  
11 has satisfied its venue obligations if you conclude that it is  
12 more likely than not that the charged crime you are  
13 considering, or any act in furtherance of that crime, occurred  
14 in the Southern District of New York.

15 Now, there's a few other things I need to tell you,  
16 which I've now completed describing the elements of the  
17 offenses, but there's a number of relevant and important  
18 matters that I need to describe, but they are miscellaneous.

19 First, regarding expert testimony: In this case, I  
20 permitted witnesses to express their opinions as an expert  
21 about matters that are in issue. An expert is someone who by  
22 education or experience has acquired learning or experience in  
23 a specialized area of knowledge. Such witnesses are permitted  
24 to give their opinions as to relevant matters in which they  
25 profess to be an expert and give their reasons for their

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1    opinions. Expert testimony is presented to you on the theory  
2    that someone who is experienced in the field can assist you in  
3    understanding the evidence or in reaching an independent  
4    decision on the facts. Now, your role in judging credibility  
5    applies to experts as well as to all other witnesses. You  
6    should consider the expert opinions that were received in  
7    evidence in this case and give them as much or as little  
8    weight as you think they deserve. If you should decide that  
9    the opinion of an expert was not based on sufficient education  
10   or experience or on sufficient data, or if you should conclude  
11   that the trustworthiness or credibility of an expert is  
12   questionable for any reason, or if the opinion of the expert  
13   was outweighed, in your judgment, by other evidence in the  
14   case, then you might disregard the opinion of the expert  
15   entirely or in part.

16           On the other hand, if you find the opinion of an  
17   expert is based on sufficient data, education and experience,  
18   and the other evidence does not give you reason to doubt his  
19   conclusions, his or her conclusions, you would be justified in  
20   placing reliance on his or her testimony.

21           Now, you have heard testimony about evidence seized  
22   in connection with certain searches conducted by law  
23   enforcement officers. Evidence obtained from these searches  
24   was properly admitted in the case, and may be properly  
25   considered by you. Such searches are entirely appropriate law

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1 enforcement actions. Whether you approve or disapprove of how  
2 the evidence was obtained should not enter into your  
3 deliberations, because I instruct you that the Government's  
4 use of the evidence was entirely lawful. You must, therefore,  
5 regardless of your personal opinions, give this evidence full  
6 consideration along with all the other evidence in the case in  
7 determining whether the Government has proven the Defendant's  
8 guilt beyond a reasonable doubt.

9           Also, you have heard testimony about cellphone  
10 location information obtained from cellphone service  
11 providers, such as AT&T, Verizon Wireless, or Sprint, pursuant  
12 to a court order. This evidence was properly admitted in this  
13 case, and may be properly considered by you. The acquisition  
14 of this evidence was an entirely appropriate law enforcement  
15 action. Whether you approve or disapprove of how the evidence  
16 was obtained should not enter into your deliberations, because  
17 I instruct you that the Government's use of the evidence is  
18 entirely lawful. You must, therefore, regardless of your  
19 personal opinions, give this evidence the full -- its -- try  
20 that sentence again. You must, therefore, regardless of your  
21 personal opinions, give this evidence full consideration along  
22 with all the other evidence in the case in determining whether  
23 the Government has proven the Defendant's guilt beyond a  
24 reasonable doubt.

25           We have, among the exhibits received in evidence,

Sue Ghorayeb, Official Court Reporter



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1 some documents that are redacted. "Redacted" simply means  
2 that part of the document or recording was taken out. You  
3 are -- and there were no recordings that were redacted. But  
4 "redacted" means that part of the document was taken out. You  
5 are to concern yourself only with the part of the item that  
6 has been admitted into evidence. You should consider -- you  
7 should not consider -- you should not consider any possible  
8 reason why the other part of it has been deleted.

9 Now, regarding persons not on trial, you may not  
10 draw any inference, favorable or unfavorable, towards the  
11 Government or the Defendant from the fact that any person  
12 other than the Defendant is not on trial here. You also may  
13 not speculate as to the reasons why other persons are not on  
14 trial. Those matters are wholly outside your concern and have  
15 no bearing on your function as jurors.

16 Now, in reaching your decision as to whether the  
17 Government has sustained its burden of proof, it would be  
18 improper for you to consider any personal feelings you have  
19 about the Defendant's race, religion, national origin, sex, or  
20 age. It would be equally improper for you to allow any  
21 feelings you might have about the nature of the crimes charged  
22 to interfere with your decision-making process. Also, any  
23 sort of bias, sympathy, or prejudice for or against either  
24 side has no relevance to the matter before you. Under your  
25 oath as jurors, you are not to be swayed by bias, sympathy or

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1 prejudice. You are to determine the guilt or innocence of the  
2 Defendant based solely on the evidence and subject to the law  
3 as I have charged you.

4 In addition, the question of possible punishment of  
5 the Defendant, if any, is of no concern to the jury, and so it  
6 may not enter into or influence your deliberations in any way.  
7 The duty of imposing a sentence rests exclusively with the  
8 court. Your function is to weigh the evidence in the case and  
9 determine whether the Defendant has been proven guilty beyond  
10 a reasonable doubt, based solely on the evidence presented in  
11 this courtroom.

12 Now, the verdict must represent the considered  
13 judgment of each juror. In order to return a verdict, it is  
14 necessary that each juror agree. Your verdict, and your  
15 answers to all of the questions on the verdict sheet, must be  
16 unanimous - all twelve of you must agree. It is your duty, as  
17 jurors, to consult with one another, and to deliberate with a  
18 view to reaching an agreement, if you can do so without  
19 violence to your individual judgment. You must each decide  
20 the case for yourself, but only after an impartial  
21 consideration of the evidence in the case with your fellow  
22 jurors. In the course of your deliberations, do not hesitate  
23 to reexamine your own views, and change your opinion, if you  
24 are convinced it is erroneous. But do not surrender your  
25 honest conviction as to the weight or effect of evidence,

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1 solely because of the opinion of your fellow jurors, or for  
2 the mere purpose of returning a verdict. Remember at all  
3 times that you are not partisans. You are judges - judges of  
4 the facts.

5 Now, when you retire to deliberate, you should elect  
6 one member of the jury as your foreperson. It could be any  
7 one of you. That person will preside over the deliberations  
8 and speak for you here in open court. The foreperson's vote  
9 is not entitled to any greater weight than any other  
10 individual juror.

11 You are not to discuss the case until all jurors are  
12 present. Only when all twelve jurors are present do you  
13 constitute a jury, and only then may you deliberate. So, you  
14 can only deliberate when all twelve of you are present in the  
15 room.

16 If it becomes necessary during your deliberations to  
17 communicate with the Court, you may send a note to me, signed  
18 by your foreperson or by one or more members of the jury. No  
19 member of the jury should ever attempt to communicate with the  
20 Court by any means other than a signed writing, and the Court  
21 will never communicate with any member of the jury on any  
22 subject touching on the merits of the case otherwise than in  
23 writing, or orally here in open court. And you will note from  
24 the oath about to be taken by the marshal, in a couple of  
25 minutes, that he too, like all other persons, is forbidden to

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1 communicate in any way or manner with any member of the jury  
2 on any subject touching on the merits of the case. Bear in  
3 mind also that you are never to reveal to any person - not  
4 even to the Court - how the jury stands, numerically or  
5 otherwise, on the questions before you, until after you have  
6 reached a unanimous verdict. In other words, do not tell me  
7 in any note what your vote is on any count.

8           Now, if during your deliberations you want to review  
9 the testimony of a particular witness, please send out a note  
10 telling the Court precisely what you want to hear. And please  
11 be very specific, as specific as you can. I urge you not to  
12 ask for testimony unless you first speak amongst yourselves  
13 and exhaust your total memory, since the collective memory of  
14 the twelve people of the jury is better than that of any one  
15 jury -- juror, I should say. But, if after discussion, you  
16 are still in doubt or vague as to a particular point in the  
17 testimony and you want to review certain testimony, I will  
18 have the court reporter gather that testimony for your review.  
19 The lawyers and I, if that happens, may decide to have you  
20 come out to hear the read-back of testimony, or we may send  
21 you back a portion of the transcript.

22           I know that some or all of you have been taking  
23 notes during the trial. Let me remind you that your notes are  
24 for your own personal use - they are not to be given or read  
25 to another juror. You may use them to refresh your

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1 recollection during deliberations, but it's important to  
2 remember that the official record of what has occurred during  
3 the trial is the official transcript prepared by the court  
4 reporter. Therefore, you must rely on the transcript to  
5 resolve any question about what was actually said during the  
6 trial.

7 Now, in reaching a decision, you are to rely solely  
8 on the testimony of the witnesses, and the exhibits and  
9 stipulations admitted into evidence at trial. You are not to  
10 do any investigation on your own. This means that, among  
11 other things, you must not conduct research via the Internet,  
12 Google, or Wikipedia via your computer, laptop, tablet,  
13 smartphone, cellphone, or any other media. As I've said many  
14 times before, your verdict must be based solely on the  
15 evidence you see and hear in this courtroom, and nothing else.

16 You will have all of the exhibits that I admitted  
17 into evidence with you in the jury room. Some of the exhibits  
18 may require the use of computers to play videos, but if you  
19 need to see those, of course you can ask to see them, and we  
20 will gladly play them for you. But, basically, I'm going to  
21 send all the exhibits back into the jury room with you.

22 I will also send in three copies of my instructions  
23 in case you want to review them during your deliberations.

24 Now, if you find that you do not understand any of my  
25 instructions, or you want me to go over them again to clarify

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1 some matters for you or just to reinforce what I had to say,  
2 send me a note asking for re-instruction and I will be happy  
3 to go over them.

4 Now, as you retire to commence your -- to begin your  
5 deliberations, you will be provided with a verdict sheet,  
6 which I will now explain. We try to keep the verdict sheets  
7 as simple as possible, and when you see it, you'll see that  
8 you need to indicate your verdict with checkmarks. So, for  
9 example, it will say Count One, and there's a box for not  
10 guilty or guilty. And it says, "If you find the Defendant not  
11 guilty of Count One, please proceed to Count Three." Why is  
12 that? Because Count Two is the firearms offense related to  
13 Count One. So, if it's not guilty, then obviously you don't  
14 have to worry about Number Two. You just go on to Number  
15 Three. "If you find the Defendant guilty of Count One, do you  
16 also find that death resulted? Yes or no." And then proceed  
17 to Count Two.

18 And, remember, on all of these -- not only the  
19 verdicts, guilty or not guilty, but all these other questions  
20 that I've just instructed you about, your verdict needs to be  
21 unanimous, all of you have to agree in order to render a  
22 verdict, and the Government has the burden of proof beyond a  
23 reasonable doubt.

24 Now, the verdict sheet is not the jury charge. I  
25 just gave you the jury charge, and I'm going to give you a

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1 copy of the jury charge. So, I make it my practice not to  
2 repeat any details about the jury charge on the verdict sheet.  
3 The verdict sheet is just for the purpose of reporting your  
4 verdict. So, you have to apply all of the instructions I've  
5 just given you to the determinations you need to make on the  
6 verdict sheet, including beyond a reasonable doubt, unanimity.

7 And then it goes on to Count Two, which, as I said,  
8 if it's not guilty on Count One, you don't even consider Count  
9 Two. But if it's guilty on Count One, you consider Count Two.  
10 And there is a question on Count Two, "If you find the  
11 Defendant guilty of Count Two, do you also find that the  
12 firearm was discharged? Yes, no -- yes or no." Two different  
13 boxes. Again, the Government has the burden of proof beyond a  
14 reasonable doubt. Your verdict has to be unanimous.

15 Then it moves on to Count Three, which is the  
16 alleged robbery of the Mini Mart. The same thing, not guilty  
17 or guilty. If you find the Defendant not guilty, you go to  
18 Count Five because you don't need to discuss Count Four. If  
19 you find the Defendant guilty of Count Three, you then proceed  
20 to Count Four, which is the firearms charge, similar to Count  
21 Two, except that on Count Four, which relates to the first of  
22 the two alleged robbery, you know, the Mini Mart robbery, on  
23 Count Four, if you find the Defendant guilty, then you also  
24 have -- the next question is, "Do you also find that the  
25 firearm was brandished?" Remember, the previous one was

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1     discharged, but this one is brandished. Again, unanimous,  
2     beyond a reasonable doubt.

3             And then Count Five relates to the alleged robbery  
4     of the Dunkin' Donuts. And so forth. I'm not going to go  
5     over every one because it's written in plain English.

6             And when you get to the very end, there's a space  
7     for the date and for the foreperson to sign. Actually, I once  
8     had a jury report a verdict which wasn't signed, the form  
9     wasn't signed. Please don't do that. You have got to sign  
10    it. Whoever the foreperson is has to sign it and date it when  
11    you're ready to report your verdict.

12            Okay. I need to spend a few moments with the  
13    lawyers and the court reporter over at the side bar. Just  
14    stay in the jury box. I'll be right back. Keep an open mind.  
15    Don't discuss the case, because I have more to say -- I may  
16    have more to say after I've spoken with the lawyers.

17            (At side bar)

18            THE COURT: Does the Government have any objections,  
19    comments or suggestions?

20            MR. SCOTTEN: No, Your Honor.

21            MS. COHEN: No, Your Honor.

22            THE COURT: Okay. Does the defense have any  
23    objections, comments or suggestions?

24            MR. RUHNKE: Your Honor, just as you suggested  
25    yesterday, we adopt our objections that we made in writing and



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1 all of the objections we made yesterday during the charge  
2 conference, and we believe that is sufficient to preserve  
3 those issues. We wonder if the Government has a different  
4 view?

5 MR. SCOTTEN: No.

6 THE COURT: I'm sure they don't and I don't care  
7 what their view is. It is sufficient.

8 MR. RUHNKE: Thank you, Your Honor.

9 THE COURT: Anything else?

10 MR. RUHNKE: No, sir.

11 THE COURT: Wait one second. As I was thinking  
12 about telling the jury about sending the evidence into the  
13 jury room, there's some evidence -- maybe a lot of evidence --  
14 that in order for them to view, they would need the use of  
15 your technology.

16 MS. COHEN: We have actually prepared a scrubbed  
17 laptop for them with all of the video exhibits. So that will  
18 be available to them to play the video without having to come  
19 back out here.

20 THE COURT: Okay. Is that acceptable to you,  
21 sending that laptop in?

22 MR. RUHNKE: Yes.

23 MR. PATEL: Yes.

24 THE COURT: And it will be easy for someone to use?

25 MS. COHEN: Yes. It's -- my understanding is they

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1 will be playing the video off the desktop.

2 THE COURT: That includes everything they would  
3 need?

4 MS. COHEN: Yes.

5 THE COURT: How about an exhibit list. Is there an  
6 exhibit list?

7 MS. COHEN: I can talk to Mr. McLaughlin about  
8 whether he can do that.

9 MR. PATEL: And the laptop has no Internet excess?

10 MS. COHEN: That's correct. It's all disconnected.

11 THE COURT: I don't require an exhibit list but  
12 sometimes it's helpful. I will leave that up to you. I'm not  
13 ordering it. I'm just throwing it out there, just curious.

14 MR. SCOTTEN: We will consult and see if we have a  
15 list ready.

16 THE COURT: Oh, alternate jurors. It's my practice  
17 to discharge the alternate jurors, period, not to make them  
18 stay around or continue to be available, unless someone has an  
19 objection.

20 MR. SCOTTEN: You don't tell them not to talk about  
21 the case in case you need to call them?

22 THE COURT: I don't usually do that when I've got --  
23 I don't usually do that. I'm willing to do that if you ask me  
24 to do it. It's certainly not incorrect, the law permits it.  
25 It's Rule 24 or something like that.

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1 MR. SCOTTEN: Obviously, it's an exceptional case.  
2 We usually ask for that because we hate to have a weird  
3 situation.

4 THE COURT: If that's what you want me to do, I'll  
5 do it.

6 MR. SCOTTEN: Yes.

7 THE COURT: Do you have any problem with it?

8 MR. PATEL: No.

9 THE COURT: Okay. I will do that as well, which  
10 means I'm just going to tell them they can't talk to anyone  
11 about the case because there might be a possibility -- we  
12 don't think so, but there might be a possibility of having to  
13 come back.

14 MR. SCOTTEN: Yes, sir.

15 THE COURT: All right.

16 MR. PATEL: Yes.

17 THE COURT: All set. Thank you.

18 (In open court)

19 THE COURT: Okay. Thank you, counsel.

20 All right. So, ladies and gentlemen, I've just  
21 been informed by the Government that -- not just by the  
22 Government, by the parties that there is a laptop, a  
23 so-called scrubbed laptop. Means it has nothing else on it.  
24 But a laptop with the digital evidence on it which will allow  
25 you to play any of that evidence, if that's what you want to

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1 do. In other words, you don't have to come in and ask us to  
2 do it for you. You can ask us to do it for you if you're  
3 having a problem or if you think that's a better way to do  
4 it, but we're going to send in a laptop. It doesn't have  
5 access to the Internet, that should probably not surprise  
6 you. It's just, it's just a -- it's just a digital device  
7 that will allow you to view the digital evidence. So, you'll  
8 have all that with you in the jury room.

9 Okay. Now, we've come to the point at which the  
10 regular jurors will commence their deliberations in the case.  
11 What that means is that the time has also come for me to  
12 discharge the alternate jurors, the three alternate jurors.  
13 And I so appreciate your attention and your appearance and  
14 your hard work, I really do, but -- and I'm sorry that you're  
15 going to miss the experience of deliberating with your fellow  
16 jurors, but the law provides for a jury of twelve persons in  
17 the case and no more.

18 So, when you go, when you go back to the jury room,  
19 the alternates should promptly retrieve their belongings.  
20 And there should be lunch back there. You should retrieve  
21 that too. But at that point, I'm going to have to ask you to  
22 leave. And after the alternates have left, then the rest of  
23 you, the twelve of you, can begin your deliberations. But,  
24 again, only after the alternates have left. You can exchange  
25 handshakes, do whatever you want to do, but the point is that

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1 the jury is the twelve, the first twelve, not the alternates.

2 I am going to ask the alternates to do one thing.

3 This is important. This rarely happens, but it sometimes

4 happens that during the course of deliberations one of the

5 twelve jurors has to be excused for some reason or another.

6 And so, what I want to do, and the law permits me to do

7 this -- what I want to do is retain the alternate jurors in

8 this sense only. I'm not making you stay in the courthouse.

9 You can leave. You can go home or to work, whatever you want

10 to do. But I need to ask you, the alternates now, the three

11 alternates, I need to ask, and, in fact, order you, to not

12 discuss the case with any other person among the three of you

13 or the others or friends or family or anyone. Unless you get

14 called back in to replace a regular juror, which I think is

15 unlikely, but I just want to preserve that possibility.

16 We know how to reach you. After the case is over,

17 we'll reach out to you and tell you that the case is over.

18 Or, if for some reason we need to call you back, we'll reach

19 out to you in order to -- you know, Alternate Number 1, 2,

20 and 3, in that order, to bring you back in, if that's

21 absolutely necessary.

22 So, Donna, we do have their contact information?

23 THE CLERK: Yes.

24 THE COURT: So, that's the way it has to work. You

25 are excused, with the proviso that until -- it will be

## Judge-Jury Charge

1 Ms. Hilbert probably reaches out to you and tells you that the  
2 case is at an end -- that you're not allowed to discuss the  
3 case with any other person. Unless, of course, you come back  
4 in, in which case we'll start deliberations from the  
5 beginning. I know that sounds tricky, but that's the way it  
6 works. If that happens, we'd start all over again with  
7 deliberations and, of course, you would be a fully engaged  
8 juror at that time.

9 If we don't see each other again, please know that  
10 you've done your duty and you've done it well. On behalf of  
11 everyone in the case, thank you for your service.

12 At this point, you may commence your deliberations.  
13 I believe lunch is here?

14 THE CLERK: Yes.

15 THE COURT: And, as I say, we'll get the evidence in  
16 to you as soon as possible. Thank you. Oh, sorry. I forgot  
17 one thing. The marshal needs to be sworn.

18 (Marshal sworn in to watch the jury)

19 THE COURT: You may commence your deliberations, and  
20 now you can discuss the case. All right? Good luck.

21 (Jury not present in the courtroom at 1:25 p.m.)

22 THE CLERK: Counsel, Court Exhibit 2 will be marked  
23 as the copy of the jury charge, just for the record.

24 THE COURT: The three copies going in to the jury.

25 (Pause. Attorneys looking over the marked exhibits)

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1           THE CLERK: Could you sign the exhibit list and  
2 could you initial it for me.

3           Have all the parties gone over the exhibits and you  
4 are all in agreement on what we're sending in to the jury  
5 momentarily?

6           MR. SCOTTEN: Yes. For the Government, yes.

7           THE CLERK: So, we are all in agreement?

8           MR. PATEL: We are all in agreement.

9           (Recess. Jury deliberating)

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Judge-Jury Charge

1 (Jury not present in the courtroom at 4:10 p.m.)

2 THE COURT: Okay. Have a seat everybody.

3 The jury has reached a verdict, which was delivered  
4 to us at 3:55 p.m. today, and I've reviewed the verdict sheet  
5 for regularity. So, let's get the -- let's get the jury in.

6 (Jury present in the courtroom)

7 THE COURT: Okay. Welcome back everybody.

8 Have a seat.

9 First of all, who is the foreperson?

10 Juror Number one. And it's Ms. Oriani; is that  
11 right?

12 THE FORELADY: Yes.

13 THE COURT: And, Ms. Oriani, has the jury  
14 unanimously agreed upon a verdict?

15 THE FORELADY: Yes.

16 THE COURT: Okay.

17 THE CLERK: Would you rise.

18 How does the jury find with respect to Count One;  
19 not guilty or guilty?

20 THE FORELADY: Guilty.

21 THE CLERK: "If you find the defendant guilty of  
22 Count One, do you also find that death resulted?"

23 Answer: Yes or no?

24 THE FORELADY: Yes.

25 THE CLERK: With respect to Count Two: "Firearms



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1 Offense during Carjacking on August 5th, 2014;" not guilty or  
2 guilty?

3 THE FORELADY: Guilty.

4 THE CLERK: With respect to the question: "Do you  
5 also find that the firearm was discharged?" Answer: Yes or  
6 no?

7 THE FORELADY: Yes.

8 THE CLERK: With respect to Count Three: "Robbery  
9 of the Mini-Mart;" not guilty or guilty?

10 THE FORELADY: Guilty.

11 THE CLERK: With respect to the question --

12 THE COURT: Count Four.

13 THE CLERK: Count Four. I apologize.

14 With respect to Count Four: "Firearms Offense  
15 during Robbery of the Mini-Mart;" not guilty or guilty?

16 THE FORELADY: Guilty.

17 THE CLERK: "Do you also find that the firearm was  
18 brandished?" Answer: Yes or no?

19 THE FORELADY: Yes.

20 THE CLERK: With respect to Count Five: "Robbery of  
21 the Dunkin' Donuts;" not guilty or guilty?

22 THE FORELADY: Guilty.

23 THE CLERK: "Count Six: Firearms during Robbery of  
24 the Dunkin' Donuts." Excuse me.

25 "Firearms Offense during Robbery of the Dunkin'

Judge-Jury Charge

1 Donuts;" not guilty or guilty?

2 THE FORELADY: Guilty.

3 THE CLERK: "Do you also find that the firearm was  
4 brandished?" Answer: Yes or no?

5 THE FORELADY: Yes.

6 THE CLERK: With respect to Count 7: "Carjacking on  
7 August 12, 2014;" not guilty or guilty?

8 THE FORELADY: Guilty.

9 THE CLERK: "Do you also find that death resulted?"  
10 Answer: Yes or no?

11 THE FORELADY: Yes.

12 THE CLERK: With respect to Count Eight: "Firearms  
13 Offense during Carjacking on August 12, 2014;" not guilty or  
14 guilty?

15 THE FORELADY: Guilty.

16 THE CLERK: "Do you also find that the firearm was  
17 discharged?" Answer: Yes or no?

18 THE FORELADY: Yes.

19 THE CLERK: With respect to Count Nine: "Robbery  
20 Conspiracy;" not guilty or guilty?

21 THE FORELADY: Guilty.

22 THE COURT: Thank you, ma'am. You may have a seat.  
23 Would either party like the jury polled?

24 MR. PATEL: Yes, please, Your Honor.

25 THE COURT: Okay.

Sue Ghorayeb, Official Court Reporter

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1 THE CLERK: Juror Number 1, is that your verdict?

2 JUROR #1: Yes, ma'am.

3 THE CLERK: Juror Number 2, is that your verdict?

4 JUROR #2: Yes.

5 THE CLERK: Juror Number 3, is that your verdict?

6 JUROR #3: Yes.

7 THE CLERK: Juror Number 4, is that your verdict?

8 JUROR #4: Yes.

9 THE CLERK: Juror Number 5, is that your verdict?

10 JUROR #5: Yes.

11 THE CLERK: Juror Number 6, is that your verdict?

12 JUROR #6: Yes.

13 THE CLERK: Juror Number 7, is that your verdict?

14 JUROR #7: Yes.

15 THE CLERK: Juror Number 8, is that your verdict?

16 JUROR #8: Yes.

17 THE CLERK: Juror Number 9, is that your verdict?

18 JUROR #9: Yes.

19 THE CLERK: Juror Number 10, is that your verdict?

20 JUROR #10: Yes.

21 THE CLERK: Juror Number 11, is that your verdict?

22 JUROR #11: Yes.

23 THE CLERK: And, Juror Number 12, is that your

24 verdict?

25 JUROR #12: Yes.

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1 THE CLERK: The jury has been polled.

2 THE COURT: Okay. I'm going to direct the Clerk to  
3 file and record the verdict.

4 Ladies and gentlemen, I'm now going to discharge  
5 you from your duties. You've done them extremely well. I  
6 have said that to you before, I mean it, and now I'll say it  
7 to you again. I hope that -- I know that jury service is  
8 difficult, but I hope it's been rewarding. You certainly  
9 have done everything that's been expected of you.

10 Now, when you're -- when you leave, you are no  
11 longer under the order that you can't talk about the case  
12 with anybody. You can talk about the case with anybody you  
13 want. You're not required to, but you certainly can if you  
14 want to.

15 It's my practice to meet with the jurors very  
16 briefly after I deal with some issues with the lawyers, which  
17 will take a few minutes. So, if any or all of you want to  
18 stick around for a few minutes, I'm just going to come back  
19 and shake your hand and, you know, thank you personally,  
20 that's all. We are not going to talk about the case, but I  
21 think what you've done is so important, you deserve to be  
22 thanked by me personally. I intend to do that.

23 By the way, you don't have to wait around for me,  
24 you don't. You are free to go. If you want to stick around,  
25 you can, and it will just be a few minutes. With that, you

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1 are discharged with the thanks of the Court.

2 (Jury not present in the courtroom)

3 THE COURT: Have a seat, please.

4 Are there any applications?

5 I will set a sentencing date in a minute, but is  
6 there anything else that we need to address?

7 MR. PATEL: Your Honor, thank you. If we could have  
8 until October 9th to file any posttrial motions.

9 THE COURT: Yes, you can have that. You're  
10 certainly not required to file posttrial motions, but you have  
11 the right to do so. Basically, you're asking for -- I think  
12 the rule is two weeks; is that right?

13 MR. PATEL: Yes.

14 THE COURT: So, whatever it is you are asking for is  
15 basically two extra weeks?

16 MR. PATEL: That's correct, Your Honor.

17 THE COURT: Okay. Any motions -- any defense  
18 motions shall be filed by October 9th. And if there are  
19 defense motions and the Government -- then the Government  
20 should respond to them by no later than October 23rd. All  
21 right?

22 MR. SCOTTEN: Yes, Your Honor. Yes, Your Honor.

23 THE COURT: I'll direct that the Probation  
24 Department conduct a presentence investigation and prepare a  
25 Presentence Report.

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1           And, Mr. Felder, as part of that presentence  
2     investigation, you're going to be interviewed by the  
3     Probation Department, and your lawyer or lawyers, however you  
4     would like to proceed, will be with you when that happens.

5           If you do speak to the Probation Officer, please  
6     make sure that anything you say is truthful and accurate,  
7     because whatever you do say is going to be reported to me,  
8     and if it's not truthful and accurate, that will also be  
9     reported to me, which will -- which will probably be  
10    unfavorable to you. And when the Presentence Report is  
11    prepared, you will have an opportunity to review it before  
12    sentencing, and I urge you to review it carefully and let  
13    your lawyers know if there are any objections or comments or  
14    anything you want to say about them -- about the report, so  
15    that your lawyers can tell me about those objections or  
16    comments of any kind prior to sentencing. If you wait until  
17    after sentencing, it's too late, so you need to do it before  
18    sentencing. And, also, you should know that at sentencing  
19    both you and your attorney will have an opportunity to be  
20    heard before I impose sentence.

21           So, Donna, can we give them a date?

22           THE CLERK: Yes.

23           THE COURT: Normally, it's three months, but we have  
24    a trial during December, and, of course, there's the holidays  
25    in December. So we would like to put the sentencing over

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1 until January. Is that okay with the Government?

2 MR. SCOTTEN: Yes, Your Honor.

3 MR. PATEL: Yes, Your Honor. Thank you.

4 THE COURT: Okay.

5 THE CLERK: How about Thursday, January 3rd, at  
6 11:00 o'clock?

7 THE COURT: You know what, let's make it -- let's  
8 put it the following week, if you don't mind, Donna, because  
9 then they can submit -- let's pick a date the following week,  
10 towards the end of the next week.

11 THE CLERK: We have a trial again.

12 THE COURT: Of course. Plus, I'm going to be out a  
13 couple of days that week too, right. So, we have to go to the  
14 third week. Sorry.

15 THE CLERK: How about Friday, January 18th, 2019,  
16 10:30.

17 THE COURT: Does that work for everybody?  
18 January 18th, at 10:30 did you say?

19 THE CLERK: Yes, Judge.

20 MR. PATEL: I believe it should be fine, Your Honor.

21 MR. SCOTTEN: Yes, Your Honor.

22 THE COURT: Okay. Any defense submission or any,  
23 you know, any sentencing memorandum from the defense will be  
24 due on -- well, let's make it January 4th, 2019, that's plenty  
25 of time, and any response from the Government or any

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1 submission from the Government will be due January 11th, 2019.

2 Okay. So, do you have all those dates?

3 The sentencing date is 1/18/19 at 10:30. Defense  
4 submission January 4th and Government submission January  
5 11th. And, of course, if the Defendant wishes to make  
6 posttrial motions, they're due by October 9th, and the  
7 Government's response will be due October 23rd. Okay.

8 Anything else that we need to do before we adjourn?

9 MR. SCOTTEN: Not from the Government, Your Honor.

10 Thank you.

11 MR. PATEL: Not -- no. Thank you, Your Honor.

12 THE COURT: Okay. Let me again tell you how much I  
13 appreciate your hard work and professionalism, and it's really  
14 a pleasure to preside over a trial in which the lawyers are so  
15 excellent, universally excellent, as they have been in this  
16 case.

17 MR. PATEL: Thank you, Your Honor.

18 THE COURT: Anyway, have a nice day everybody.

19 We are adjourned.

20 (Case adjourned)

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